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THE

COUNTY COURTS ACT, 1867;

AND THE PROVISIONS OF THE

COMMON LAW PROCEDURE ACT, 1854,

RELATING TO DISCOVERY, ATTACHMENT OF DEBTS, AND EQUITABLE DEFENCES,

(APPLIED BY ORDER IN COUNCIL TO THE COUNTY COURTS,)

TOGETHER WITH THE

NEW COUNTY COURT RULES, ORDERS, AND FORMS.

EDITED,

WITH NOTES AND INTRODUCTION, AND A CHAPTER ON COSTS,

BY

JAMES EDWARD DAVIS, ESQ.,

BARRISTER-AT-LAW,

AUTHOR OF A 'MANUAL OF THE PRACTICE AND EVIDENCE AND OTHER PROCEEDINGS IN THE COUNTY COURTS.'

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PREFACE.

It was due to the purchasers of the third edition of my work on the 'Practice and Evidence in the County Courts' that I should undertake the preparation of an edition of the recent "County Courts Act, 1867," and the various new Rules and Orders issued in consequence of that Act.

The practice of the County Courts, under the "Common Law Procedure Act, 1854," in reference to discovery, attachment of debts, and equitable defences (provisions recently applied by Order in Council to the County Courts), forms a part of the work scarcely less important than the provisions of the new Act.

A separate part of the work is devoted to the consideration of the law of Costs, not merely in reference to the County Courts, but also to the superior Courts. The extensive powers of removal of actions from the superior Courts to the County Courts, and from the County Courts to the superior Courts, rendered it very desirable to present suitors with a clear view of their position and liability, rendered additionally complicated and embarrassing by the language of the new Rules and Orders.

A thorough knowledge of the jurisdiction of the County Courts, as extended by the new Act, is now absolutely essential for all lawyers. Barristers, whether at the equity or common law bar, and attorneys and solicitors, whatever branch of the law they have hitherto followed, or by whatever class of clients they may be consulted or employed—cannot ignore the practice any more than they can ignore the existence of the local Courts of the country.

On the other hand, the practitioner in the County Courts is not to suppose that the alterations recently effected either require or render it desirable that he should set aside his former legal guides. The best way to acquire a thorough knowledge and comprehension of the jurisdiction and practice of the County Courts is, for the present at least, to treat the new law (extensive as the alterations may be) as supplemental to the former law. Not only is the evidence in particular actions unaltered; but the practice under the former jurisdiction remains substantially the same, and the former rules are re-embodied in the new.* Even where provisions of former Acts are expressly repealed, the decisions upon their construction are applicable to the new law; and a constant reference even to repealed provisions will be necessary.† A greater mistake

* Only three of the old forms have been altered.

† A striking illustration of this is found in the very first section of the new Act, which enables suitors, by leave of the Court, to take proceedings in the district where part of the cause of action arose. Under the former law, now repealed, the

cannot be made than to treat the established works, whether on evidence or practice, as if they were obsolete. No entirely new work at the present moment, with the new practice, shutting out the former law, would be satisfactory to the practitioner who desires thoroughly to understand his profession. Considerations of this kind determined me not to attempt for the present an entirely new edition of my work.

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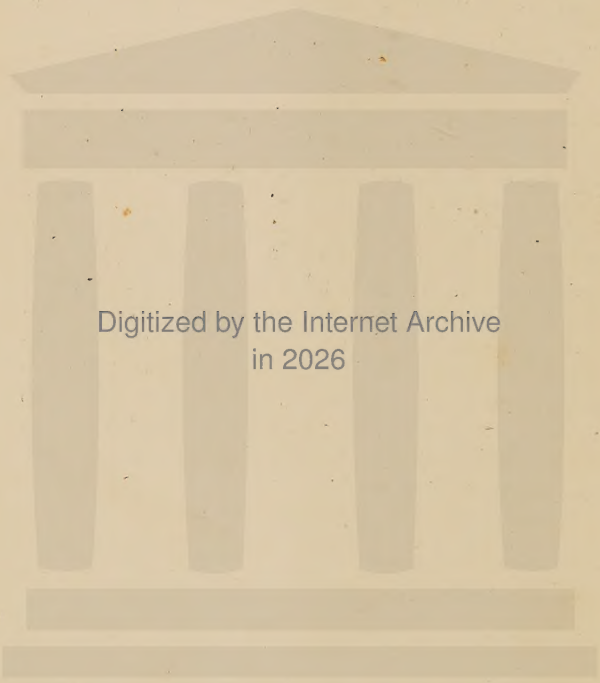
whole cause of action must have arisen in one district. Numerous cases have been decided under the former law on the question whether the cause of action arose wholly in one district or partly in one district and partly in another. Every one of those cases is now applicable to show where the cause of action arose. For example, the case under the old law which decided that the plaintiff could not sue in the district where the goods were delivered, because the order for them was given in another district, is now an authority as well to the plaintiff as to the Registrar of the Court, establishing the suitor's right to apply for leave to sue in either district. All these cases under the old law are therefore given, and their precise effect on the new law stated in the observations appended to the first section of the new Act. (See *post*, pp. 25 to 28.)



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CONTENTS.

PAGE

INTRODUCTORY CHAPTER 1

THE COUNTY COURTS ACT, 1867, WITH NOTES 22

CHAPTER ON COSTS 53

DISCOVERY, ATTACHMENT OF DEBTS, AND EQUITABLE DEFENCES 68

RULES AND ORDERS.—Common Law 81

ORDERS AND RULES.—Equity 138

FORMS.—Common Law 168

FORMS.—Equity 254

SCALE OF COSTS AND CHARGES TO BE PAID TO COUNSEL AND ATTORNEYS IN ACTIONS 286

SCALE OF COSTS AND CHARGES TO BE PAID TO COUNSEL AND ATTORNEYS IN EQUITABLE MATTERS 291

SCHEDULE OF COSTS IN THE SUPERIOR COURTS OF COMMON LAW (Referred to in Rule 131) 295

SCHEDULE OF FEES IN THE SUPERIOR COURTS OF COMMON LAW (Referred to in Rule 131) 300

TREASURY ORDER, Regulating Fees 302

INDEX 311

THE COUNTY COURTS ACT, 1867,

ETC.

INTRODUCTORY CHAPTER.

THE GENERAL SCOPE AND EFFECT OF THE NEW ACT AND OF THE PROVISIONS OF THE COMMON LAW PROCEDURE ACT, 1854, APPLIED TO COUNTY COURTS.

THE provisions of "The County Courts Act, 1867,' the most important Act with reference to those Courts passed since their first establishment, may be classified under the following heads:—

FIRST.—The extension of the jurisdiction of the Courts by giving them cognizance of additional matters, and subjects of inquiry and decision.

Under this head the jurisdiction has been increased in a very important respect by giving a right to bring actions of ejectment in the County Courts, and actions in which the title to corporeal and incorporeal hereditaments is in question, where neither the annual value nor the rent exceed twenty pounds. Under the previous law, consent of both parties was necessary to give jurisdiction to the County Court in questions of title.

Some extension of jurisdiction under this head has also been effected by making the equitable jurisdiction of County Courts more complete and effectual in reference to suits for specific performance, or for delivering up or cancelling agreements, by including agreements for *leases* where the value of the property does not exceed £500, and also giving jurisdiction in suits for the *reforming* as well as the specific performance, delivering up, or cancelling of agreements for the sale, purchase, or lease of property, to the above value.

Under this head must be also included the power given by the new Act to award costs in the case of actions or suits improperly brought in the County Court, which the Court has no jurisdiction to try. It was often a hardship on defendants, when summoned to a County Court in respect of matters over which the Court had no jurisdiction, that there was no power to award them costs.

SECONDLY.—The extension of the jurisdiction of the Courts in reference to the power to institute proceedings in particular districts, and the prohibition to sue elsewhere.

The new Act gives power to suitors in the County Courts (with leave of the Judge or Registrar) to take proceedings in the district where *part* of the cause of action arose. Hitherto, a plaintiff could only sue where the defendant dwelt or carried on business, or where the *whole* cause of action arose. For example, if a verbal order for goods was given to the plaintiff's agent, at the distance of a hundred miles from the place where the goods were manufactured or stored, although the goods were delivered to the defendant at that place, or were at his risk on delivery at a railway station at the place of manufacture or warehousing, the plaintiff must hitherto have sued for his debt in the district in which the defendant dwelt or carried on business; and the same if the goods had been ordered by a post letter, received at the ware-

house or place of manufacture, and the goods had to be delivered by the plaintiff at the defendant's residence. In these two instances, as the whole cause of action (the order and the delivery) did not arise in one district, the plaintiff could only sue where the defendant dwelt or carried on his business, although if both the order had been received and the delivery at the purchaser's risk had taken place in one and the same County Court district, the plaintiff could have obtained leave to sue there.

These illustrations will suffice to show the importance and extensive application of the power of suitors to apply for, and of the Courts to give, leave to sue where part only of the cause of action arose.

Greater facilities have been also given for suitors in the City of London and in the Metropolis, by allowing them the option of suing, either in a Metropolitan County Court, or in the City of London Court.

Under this second head may be classed the provision of the new Act, which prohibits any action or suit which can be brought in any County Court, from being henceforth commenced or maintainable in any Hundred or other Inferior Court, not being a Court of Record.

THIRDLY.—The extension of jurisdiction by the transfer to the County Courts of proceedings instituted in other Courts.

Very important alterations falling under this head have been made by the new Act.

Not only, as heretofore, can a Judge of a Superior Court, *at his discretion*, on the application of either party *after issue joined* in an action of contract brought in a Superior Court, for a sum not exceeding £50, order the cause to be tried in any County Court on such terms as he may think fit, but now the defendant in any such action may, *within eight days after the service of the writ*, apply to a Judge for an order for the trial of the action in the County Court; and the Act directs *that unless the Plaintiff shows good*

cause to the contrary, the Judge shall order the action to be tried accordingly.

A still more important and wholly new provision has been made in respect to actions of tort. Upon the affidavit of a defendant in an action in a Superior Court for malicious prosecution, illegal arrest, illegal distress, assault, false imprisonment, libel, slander, seduction, or other action of tort, that the plaintiff has no visible means of paying the costs if he fails, a Judge may make an order that, unless the plaintiff gives security for costs, or satisfies the Judge that he has a cause of action fit to be prosecuted in the Superior Court, all proceedings shall be stayed, or that the cause be remitted for trial before a County Court.

There can be no doubt that this provision will materially diminish, if not entirely get rid of, a class of vexatious actions, brought either for annoyance or for the sake of costs.

So also when any suit is pending in the Court of Chancery which might have been commenced in a County Court, the Judge to whose Court the suit is attached, may, either upon the application of any of the parties, or without such application, order the suit to be transferred to the County Court, or one of the County Courts, in which it might have been commenced.

As, in consequence of these provisions falling under the third head, the power heretofore existing and extensively acted upon under the Act 3 & 4 Will. IV. c. 42, s. 17, of ordering actions to be tried before a Sheriff or Judge of an Inferior Court of Record when the debt or sum sought to be recovered did not exceed £20, became unnecessary and valueless, that section has been repealed.

Fourthly.—The extension of the operation of the County Courts by the further deprivation of costs to persons suing in the Superior or other Courts.

By the law as it existed (so far as relates to County

Courts), before the passing of the new Act, persons recovering in the Superior Courts a sum not exceeding £20 in an action founded on contract (*i. e.* covenant, debt, detinue, or assumpsit), other than an action for breach of promise of marriage, or a sum not exceeding £5 in an action of tort (*i. e.* trespass, trover, or case), other than actions for malicious prosecution, or for libel, or for slander, or for seduction, were *primâ facie*, not entitled to any costs from the defendant. If, however, the Judge, or other presiding officer, certified that it appeared to him that the cause of action was one for which a plaint could not have been entered in any County Court, or that there was a sufficient reason for bringing the action in the Court in which it was brought; or if the plaintiff satisfied the Court that the action was brought for a cause in which concurrent jurisdiction was given by the original County Court Act (*i. e.* where the plaintiff dwelt more than twenty miles from the defendant, or where the cause of action did not arise wholly, or in some material point within the jurisdiction of the Court where the defendant dwelt or carried on business),—in either of those cases the plaintiff was entitled to his costs (unless, irrespective of the County Court Acts, he was disentitled to costs by reason of the provisions of other statutes) (*a*).

The new Act, repealing the above provisions relating to County Courts, deprives a plaintiff, suing in the Superior Courts, of costs, if he does not recover more than twenty pounds if the action is founded on contract, or ten pounds if founded on tort, in whatever way the action might be terminated (whether by verdict, judgment by default, or on demurrer, or otherwise), unless the Judge certifies on the record that there was sufficient reason for bringing the action in the Superior Court, or unless the Court, or a Judge at Chambers, allows the costs.

At first sight, the only important alteration effected

(*a*) See *post*, p. 31, observations appended to s. 5 of the Act.

by the new Act is raising the amount to be recovered in actions of tort, in order to carry costs from "a sum not exceeding five pounds" to "a sum not exceeding ten pounds."

This alteration, in that respect, will undoubtedly have a most important effect upon a numerous class of actions brought in the Superior Courts; probably not so much by effecting a transfer of claims from the cognizance of the Superior Courts to that of the County Courts, as in diminishing the number of actions brought. It is a fact notorious in Westminster Hall and on the circuits, that many actions have been heretofore brought speculatively with a view to costs rather than to damages, the latter being considered important only, or chiefly so far as the amount of damages affects the right to costs, the suitors being puppets in the hands of their attorneys, having little real interest in the result, unable to pay, or indemnified from, costs, if they lose; and the damages, if obtained, absorbed by the lawyers. The grievance, or wrong, in respect of which compensation is claimed is generally in itself of small amount, and therefore to double the amount of damages necessary to obtain costs, is to double at least the risk of attaining the object in view; and if this increase of risk deters the bringing of actions in the Superior Courts (as it undoubtedly will), it may not, on the other hand, add any proportionate increase of actions to the County Courts. The question with the promoter of litigation is not so much whether he shall bring the action in the County Court or in the Superior Court, as whether it shall be brought at all.

The alteration effected by the new Act, however, in the diminution of actions may be much wider than is even here indicated. Heretofore, if the action was for breach of promise of marriage, malicious prosecution, libel, slander, or seduction (which would appear by the pleadings on the record), or if it was otherwise made to appear that the cause of action was one for

which a plaint could not have been entered in a County Court, that is to say, that it was an action in which the title to any corporeal or incorporeal hereditaments, or to any toll, fine, market, or franchise was in question, or in which the validity of any devise, bequest, or limitation under any will or settlement might be disputed, the plaintiff was generally entitled to his costs.

It is clear that so far as questions of title to corporeal or incorporeal hereditaments are concerned, that the mere fact of their being in question will be no longer a ground for the Judge certifying for or the Court granting costs, as the new Act expressly gives jurisdiction to the County Court to decide such questions of title where the annual value of the land does not exceed £20 a year (*a*). It may be doubted whether a Judge is bound to certify that there was sufficient reason for bringing the action in the superior Court, or whether the Court or a Judge will feel bound to grant costs, merely because there was no jurisdiction to bring the action in the County Court, and that therefore the plaintiff had no choice of courts; or whether they will feel at liberty to withhold costs because in their opinion no action should have been brought at all under the particular circumstances. Many Judges, for example, think that an action for breach of promise of marriage should not be brought at all, but if the plaintiff recovers, say £20 damages, a Judge will scarcely feel warranted in withholding a certificate under the new Act that there was sufficient reason for bringing the action in the superior Court, for, in order to get the damages which a jury has by the verdict said the plaintiff was entitled to, the action must have been brought in a superior Court.

Another alteration effected by the new Act relates to the amount of costs to which successful defendants are entitled. Under the original County Court Act if a verdict was not found for the plaintiff

(*a*) See *ante* p. 1.

in an action which might have been brought in a County Court, and for which no option of suing in the superior Courts was reserved by that Act, the defendant was entitled to costs as *between attorney and client*, unless the Judge certified that the action was fit to be brought in the superior Court. This provision is repealed by the new Act.

An oversight in reference to the question of costs, of considerable, although of temporary importance, remains to be noticed. By the new Act the former provisions of the County Court Acts relating to costs are repealed from the 1st of January, 1868. The new and substituted provisions only relate to actions *commenced after* the new Act takes effect (*a*). The apparent result is that the right to costs of all actions commenced before the passing of the new Act (20th August, 1867) (if not before the 1st January, 1868) and pending on the 1st January, 1868, will be unaffected by any County Court Acts, and, consequently, that plaintiffs will obtain their costs in many cases where they ought not to have them.

It is remarkable that a similar oversight was committed on the passing of Lord Denman's Act (3 & 4 Vict. c. 29) and was remedied by special legislation (4 & 5 Vict. c. 28), a course which will probably be considered necessary in the present instance.

There is another provision of the new Act falling under this fourth head. Where actions are brought in other than the superior Courts or County Courts, which could have been brought in a County Court, and "the verdict recovered" is for a less sum than ten pounds, the plaintiff is only entitled to costs to the same amount that he would have been allowed

(*a*) "Commenced after the passing of this Act" is the precise language employed in s. 5, but that is restrained by the subsequent provision that the Act shall come into operation on the 1st of January after the passing of the Act (*Wood* v. *Riley*, 37 L. J. C. P. 24). It seems doubtful whether on and from that day s. 5 relates back to the actual passing of the Act, or is to be read as inapplicable to any action commenced before 1st January.

if the action or suit had been brought in a County Court, unless the Judge certifies that it was a fit action or suit to be brought in such other Court.

Fifthly.—Allowing proceedings in the nature of judgment by default.

Under the original establishment of the County Courts, plaintiffs were obliged to prove their claims in open Court, although the defendant made default in appearance to the summons, there being no recovery in the nature of a judgment by default; and this was no doubt a proper provision; for apart from the service of the summons not being necessarily personal, fictitious claims or claims over which County Courts in general, or the particular County Court had not jurisdiction, might be otherwise recovered.

On the extension of the jurisdiction of the Courts to larger amounts, proceedings in the nature of judgment by default were introduced. A plaintiff seeking to recover a debt or liquidated money demand exceeding twenty pounds had the option of issuing a special form of summons entitling him to judgment in the event of the defendant, after personal service, not giving notice of his intention to defend.

Great inconvenience, however, still existed in the case of debts under twenty pounds, where wholesale manufacturers or dealers supplied tradesmen resident at a distance with small quantities of goods; for, as the debtor in many cases could be sued only in the district where he resided, it was incumbent on the creditor to attend himself or send his witnesses to the County Court, although the defendant might not appear, or, appearing, admitted the claim. The creditor in such a case might lose and frequently has lost the costs he had been put to (often far exceeding the amount of the debt) either by reason of the defendant's inability to pay or the Judge of the Court for some reason or another refusing to allow them.

Although this inconvenience is now to a great extent removed by allowing creditors to sue in the dis-

trict where part of the cause of action arose (*a*), more complete relief is afforded by another provision of the new Act.

In actions in the County Court for the price or value of goods or chattels which, or some part of which, were sold and delivered to the defendant, to be dealt with in the way of his trade, profession, or calling, the plaintiff has now the option, however small the amount of the demand may be, of proceeding in the ordinary way, or issuing a special form of summons; and in the latter case, if the defendant, after personal service, does not give notice of his intention to defend, judgment may be obtained without proof of the claim.

A new feature in the procedure of the County Courts has been also introduced by permitting the summons in the above cases to be served (at the plaintiff's option), either by the bailiff of the Court or "by the plaintiff, his attorney, or by some clerk or servant in the permanent employ of the plaintiff or his attorney."

Heretofore all summonses were required to be served by the bailiff of the Court.

SIXTHLY.—Permitting the Registrar to adjudicate on undefended cases.

Under the new Act, where a defendant in an action founded on contract does not appear at the hearing, the Registrar may, by leave of the Judge, take proof of the debt, and order payment by instalments or a nonsuit, or may adjourn the cause; so when the defendant appears and admits the claim, the Registrar may, by leave of the Judge, settle the terms and conditions of payment.

Heretofore the Judge of the Court alone has had power to adjudicate in cases, and the propriety of permitting him to delegate this duty may be questioned. Nevertheless, the actual practice in many Courts has been for the Registrar to deal with undefended cases,

(*a*) See *ante*, p. 2.

the Judge merely being present in Court. The presence of the Judge will no longer be necessary, for the leave of the Judge may, it seems, be a general leave, and not a special one for each case as called on.

SEVENTHLY.—The extension of the powers of appeal.

The previously existing right of appeal from the County Courts, so far as relates to actions, was when either party was dissatisfied with the determination or direction of the Judge in point of law, or upon the admission or rejection of evidence in any case where the debt, damage, or demand is above twenty pounds, or in replevin, where the amount of rent or damage exceeds twenty pounds; or in interpleader, where the money or the value of the goods or chattels claimed, or the proceeds, exceeded that sum.

The new Act gives a right of appeal in all cases in which a fresh jurisdiction has been conferred, that is to say, in all actions of ejectment and in all actions in which the title to any corporeal or incorporeal hereditament comes in question; but in addition to this, the Judge of the County Cort may, if he thinks it reasonable and proper, allow an appeal in any action.

This last-mentioned power will be of some use in cases where questions of importance and difficulty arise, as they not unfrequently do, in actions where the amount immediately involved is unimportant.

It would have been probably more satisfactory to suitors if a right of appeal were given to the extent conferred on parties in the case of summary proceedings before Magistrates, where, under the 20 & 21 Vict. c. 43, either party may apply to the Justices for a case to be stated for the opinion of one of the Superior Courts on a question of law, with a right to the Justices to refuse to state it if they think the application is merely frivolous; such refusal, on the other hand, being subject to the control of the Court of Queen's Bench.

In the County Court, where a discretion exists, the discretion cannot be reviewed.

EIGHTHLY.—Taking away the right of action for ale scores.

The new Act, by declaring that "No action shall henceforth be brought or be maintainable in any Court to recover any debt or sum of money alleged to be due in respect of the sale of any ale, porter, beer, cider, or perry, which after the commencement of this Act was consumed on the premises where sold or supplied," gets rid of a previous anomaly in the law. Heretofore, although no action would be maintained for a glass of spirits, ale scores were recoverable. A similar clause to the present was introduced, with general approval, in a bill of Lord Westbury's; but the bill having been rejected on other points, this desirable amendment of the law was not then carried out.

NINTHLY.—Miscellaneous provisions; amending the procedure of the Courts by allowing rules to be made for commencing proceedings in equity by summons, and by extending the powers to interplead; the investment of trust moneys; additional powers for framing scales of costs; the transfer to the Commissioners of the Treasury and to the Lord Chancellor of certain powers relating to the Courts, heretofore vested in the Secretary of State; placing the Sheriff's Court of the City of London on the footing of a County Court; auxiliary powers of Judges and their Deputies, Registrars, and Bailiffs; the discontinuance of Joint Registrars, and the remuneration of Registrars and High Bailiffs for duties under the Act.

Observations on these provisions, and on the rules made in exercise of the powers conferred by some of them, will be found appended to the various sections of the Act.

But besides the County Courts Act, 1867, a very important extension of the jurisdiction and alteration of the practice of these Courts has been effected by

the application to them of some of the provisions of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125).

By s. 105 of that Act, power was given to her Majesty, by an Order in Council, to direct that all or any part of that Act should apply to any Court of Record in England and Wales, and that within one month after such Order should be made and published in the 'London Gazette,' such provisions should accordingly extend and apply to such Courts.

By an Order in Council on the 18th November, 1867, in accordance with this power, certain sections of the Act were extended and applied to "all the Courts of Record established under the provisions of the County Courts Act, 1846, and also to the City of London Court of Record, as constituted by the County Courts Act, 1867."

The provisions of the Common Law Procedure Act, 1854, thus applied, comprise the three following heads:—

First, the discovery of documents in the possession or power of the opposite party, and the delivery of written interrogatories, and compelling their answer;

Secondly, "the attachment of debts;" and

Thirdly, the power to set up equitable answers to legal claims and to legal answers to claims.

It will be desirable to point out, in general terms, the scope and operation of these powers under the above heads.

First.—The discovery of documents and delivery of interrogatories.

Previous to the Common Law Procedure Act, 1854, and independently of statutory enactment, the Superior Courts of Common Law exercised the power of compelling the production of documents for the purpose of being stamped, so as to be available in evidence, as also the inspection of documents upon which the action or defence was immediately founded, as well as of documents, necessary for the purpose of

evidence, in which the applicant had a direct interest, and which were held by the opposite party in a fiduciary capacity, and of certain documents of a public character, such as the rolls of a manor or corporation books.

Besides this, the Superior Courts had, by the Act to Amend the Law of Evidence (14 & 15 Vict. c. 89, s. 6), upon the application of either party to an action or other legal proceeding, power to compel the production and inspection of a document in the custody or under the control of the opposite party, relating to such action or other legal proceeding; and, if necessary, to take examined copies thereof or to procure them to be stamped, in all cases in which a discovery might have been obtained by filing a bill or by any other proceeding in a Court of Equity.

This power could, however, only be exercised by a Court of Common Law where the party applying could satisfy the Court that the document, of which he sought the production, was in the possession of his adversary; and many applications under that statute failed for want of such a power as Courts of Equity possess, but which the above statute did not confer upon Courts of Common Law, namely, that of compelling a preliminary discovery, by either party, of what documents he had in his possession or power relating to the matters in question. If that preliminary discovery could be obtained, the Court could proceed, without being perplexed by any difficulty in tracing the custody of the documents, to order the production of such as ought to be produced; but without the power of compelling such a preliminary discovery, the statute above referred to was comparatively valueless, although there can be no doubt it was the intention of the Legislature in framing it, to grant to Courts of Common Law a power of discovery of documents as extensive as that possessed by Courts of Equity, but, from the defect above pointed out, the intention of the Legislature was frustrated, and it was

essential, in order to give effect to that intention, that each party should have a right to compel the other to discover and set forth what documents relating to the cause are in his possession or power.

So also before the Common Law Procedure Act, 1864, the Courts of Law possessed no power of compelling the discovery of facts within the knowledge of an adverse party, except, indeed, that each party might be called as a witness by his opponent; but it is obvious that this course will only be resorted to in the most desperate emergency. It cannot reasonably be expected that a party ignorant of what his adversary may be prepared to swear, shall put so adverse and interested a witness into the box without having had any opportunity of previous interrogation. For the purpose of discovery previous to the trial, whether of facts or of documents, the party desiring it had no alternative, before the Common Law Procedure Act, 1854, but to resort to a Court of Equity. This was altogether wrong, for it is an indisputable proposition that every Court ought to possess within itself the means of administering complete justice within the scope of its jurisdiction. The necessity of resorting to a Court of Equity for discovery involved fresh process, much delay, and additional expense; the greater part of which would be avoided by causing the necessary proceedings to be had in the Court in which the suit was already pending.

Such being the conclusions of the Common Law Commissioners, their recommendations were carried out by the Common Law Procedure Act, 1854, giving power to the Superior Courts, on the application of either party, to order the opposite party to state, on oath, what documents are in his possession or power relating to the matter in dispute.

The Common Law Commissioners did not, however, confine their recommendations of conferring power of discovery on the Common Law Courts to documentary matter alone, but included in it the examination

of the parties upon all matters relating to the questions in dispute. Accordingly the Common Law Procedure Act, 1854, empowered either party in a cause, upon the order of the Court or of a Judge, to deliver to the opposite party or his attorney, provided such party would be liable to be called and examined as a witness, written questions on any matter as to which discovery may be sought, and requiring such party within ten days to answer the questions in writing by affidavit.

This opportunity for examination prior to the trial is useful, not only for the purpose of discovering facts exclusively in the knowledge of the opposite party, but as the means of sparing the trouble and expense of producing evidence of facts which he may be prepared to admit; while, on the other hand, it tends to make more clearly manifest the matters which are alone in contest between the parties.

In some cases this preliminary discovery may even altogether obviate the necessity of any trial, by compelling the one party or the other to admit facts decisive of the case upon the merits, so as to show that proceeding to trial would be a mere abuse of the forms of justice. A power of preliminary discovery likewise tends to expose the motives of groundless actions brought for vexation, and of unfounded defences set up and persisted in for delay. If the very existence of such a power has not the effect of preventing the necessity of its exercise, it at least aids the Court in extirpating frivolous and improper litigation.

The power of interrogating the adverse party is by no means confined to the written questions above referred to. In pursuance of the recommendations of the Commissioners, an opportunity is afforded for oral examination. The Court or a Judge may, on the application of either party, in case of an insufficient answer to the written questions before referred to, direct an oral examination of the other party before

either a Judge or Master of the Court. The discretion of the Court or Judge in permitting the examition prevents the power of personal examination being abused, by being made a means of vexation and oppression when used against weak or timid persons.

Secondly.—The attachment of debts.

The statute 1 & 2 Vict. c. 110, extended the remedies of creditors against the property of debtors by enabling securities for money to be taken in execution, but the provision proved of but limited use in practice, by reason of its only applying to specific coin or banknotes of the debtor, which can be taken without an assault upon him, and debts secured by cheques, bills of exchange, promissory notes, bonds, specialties, and securities for money, which the debtor can easily secrete, and the amount of which could not be recovered by the creditor without their being actually seized; whilst debts which were not so secured, or the securities for which could not be actually seized, were not available for the satisfaction of creditors unless under a regular bankruptcy.

The Common Law Commissioners, 1853, suggested that the remedies of creditors against the property of their debtors might be made more extensive by enabling a creditor after judgment to attach debts and moneys of his debtor in the hands of third persons, and so obtain satisfaction of his judgment. The course of proceeding under writs of execution at the suit of the Crown, and by way of foreign attachment in the Mayor's Court of London and some other cities, as well as in the Courts of many foreign countries, showed that such a remedy would be practicable and useful. The Commissioners accordingly recommended that a creditor, having obtained a judgment, should be allowed to proceed by a process similar to foreign attachment against the debtors of his debtor, and to procure payment of their debts to himself; and, further, that he should be entitled to a discovery, in the manner already pointed out, of what pro-

perty the debtor has, capable of being taken in execution. The Common Law Procedure Act, 1854, accordingly carried these recommendations into effect by enabling judgment creditors to examine debtors orally as to debts due to them, and empowering a Judge to order an attachment of debts due by third persons, and compelling such third persons to pay them to the creditor.

THIRDLY.—The powers to set up equitable answers to legal claims, and to legal answers to claims.

By the Common Law Procedure Act, 1854, defendants in actions were permitted to set up equitable defences to Common Law actions, and plaintiffs were permitted in like manner to avoid the effect of legal answers to claims, by setting up an equitable answer to the defendant's pleas at law.

The object of conferring this power was to meet those cases,—happily rare;—but which, nevertheless, when they occur, are a discredit to our jurisprudence, in which Courts of law and equity apply different rules of right and wrong to the same subject matter. They do not so much arise out of any defect in procedure as out of a defective state of the substantive law itself; and the true remedy for such evils is to make the law uniform by Legislative enactment. Glaring instances of this description occurred before the Common Law Procedure Act, 1854, in cases where Courts of law were obliged to hold defences untenable, which in a Court of equity are considered valid. The result was, that a Court of law was forced to give a judgment in favour of the plaintiff which a Court of equity would restrain him from enforcing. Thus, when one of the parties to a deed under seal did some act not amounting to an actual prevention of performance, or had entered for valuable consideration into some agreement not under seal, by which another party in the deed would have been absolved from the performance of his covenant but for the circumstance of its being under seal, which (by a harsh

application of the rule of the civil law, *eo genere quidque dissolvi quo colligatum est*) nullifies in a Court of law the defence arising out of such an act of agreement, and subjects the covenanting party to a judgment for the damages occasioned by his breach of covenant, thus left technically unexcused, a Court of Equity interposed, and, disregarding the mere formality of the seal, by injunction perpetually prohibited the party whose act or agreement, but for that formality, would have constituted a defence, from enforcing the judgment which he had obtained, and which, but for the imperative strictness of the law, the Common Law Courts would not have pronounced. (*a*).

It was certainly an apparent anomaly that, although an equitable jurisdiction was conferred on the County Courts by the Act 28 & 29 Vict. c. 99, those Courts nevertheless had not even the equitable powers of the Superior Courts of Common Law under the Common Law Procedure Act, 1854, to permit defendants in actions at law to set up an equitable defence (*b*).

(*a*) See the Second Report of the Common Law Commissioners, 1852.

(*b*) The following illustration was given of the inconvenience, and apparent inconsistency, produced by the existence of this distinction:—"A. lends B. £50, taking as security the joint and several promissory note of B. and C., payable in three months; C. being surety for B. When the note is due, B., without the knowledge of C., pays three months' interest to A., who agrees to hold the note over for three months. B. becomes insolvent, and A., at the expiration of the time, sues C. upon the note. If sued in the County Court, C. must pay; he has no defence; but if the action is brought in a Superior Court, he may, by plea, set up the giving of time to B. as an answer; for, although a person signing a promissory note just as if he were a principal, although in fact signing by way of surety for another, is at Common Law treated as a principal, and is not discharged by time given to the actual borrower, unless the lender expressly agreed to treat the other as surety only, yet the Courts of Equity do not consider it essential, in order to give the rights of a surety under the above circumstances, that the creditors agreed that the party should be looked upon as a surety, and they would accordingly hold that C. was not liable, on the ground that the giving time was a fraud on him, although A. did not agree, nor did C. stipulate, that he should be considered or treated by A. as surety, otherwise than as a maker of the note." Davis's 'County Courts Equitable Jurisdiction Act,' pp. 4, 5.

The application to the County Courts of the provisions of the Common Law Procedure Act, 1854, relative to these three heads will undoubtedly prove a most valuable addition to the powers of suitors. The attachment of debts, if found capable of a practical application to wages, (and there does not appear to be any insuperable difficulty in the way of such application,) will probably have a very extensive effect on the practice of the County Courts in claims as well of the smallest as of the highest amount.

It is probable that the power to attach debts, combined with the application to debts of a larger amount than heretofore, of the stringent powers of the County Court in enforcing payment of debts by imprisonment, will lead to placing the law as to the recovery of debts on a more equal footing than now exists.

At present, the poorer class of debtors, including all the labouring classes, are liable to perpetual imprisonment by means of repeated warrants of commitment for non-payment of debts, although the debts were incurred without fraud or improvidence, and imprisonment may, and does, take place after sale by the creditors, of all the debtors available goods, and without the possibility of their availing themselves of any bankruptcy or insolvent law; while, on the other hand, debtors of a higher class resort to a deed of arrangement or composition, or, if arrested, are detained only a few days in confinement, and come out freed from all further personal liability. Questions of this kind, however, require consideration, as well by the statesman and political economist as by the lawyer.

Under the powers conferred by the County Courts Acts, new County Court Rules, Orders, and Forms, embodying and consolidating the previous Rules, Orders, and Forms, together with many new Rules adapted to the new Act and the applied provisions of the Common Law Procedure Act, 1854, have been prepared and issued by the Committee of Judges of

the County Courts appointed for that purpose, and approved by the Lord Chancellor.

The Orders, Rules, and Forms in Equity are kept distinct from the ordinary Rules, Orders, and Forms in Common Law.

Besides this new body of Orders, Rules, and Forms, scales of costs and charges to be paid to counsel and attorneys in actions, and in equitable matters have been framed by the Committee of Judges and approved of.

An Order of Commissioners of Her Majesty's Treasury regulating Fees in the County Courts has also been issued and approved by the Chancellor.

All these Orders, Rules, and Forms took effect simultaneously with the new Act, that is to say, on the 1st of January 1868.

30 & 31 Vict. c. 142.

An Act to amend the Acts relating to the Jurisdiction of the County Courts.

[20*th August*, 1867.]

Whereas it is desirable to amend the Acts relating to the jurisdiction of the County Courts: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Where Summons may issue.

1. A plaint may be entered in the County Court within the district of which the defendant or one of the defendants shall dwell or carry on his business at the time of bringing the action or suit, or it may be entered, by leave of the Judge or Registrar, in the County Court within the district of which the defendant or one of the defendants dwelt or carried on business, at any time within six calendar months next before the time of action or suit brought, or, with the like leave, in the County Court in the district of which the cause of action or suit wholly or in part arose.

See the general observations on the effect of this section, *ante*, p. 2.

The previous law in reference to the Court in which the summons might issue was as follows. The 9 & 10 Vict. c. 95, s. 60 enacted that the summons may issue in any district in which the defendant or one of the defendants shall dwell or carry on his business at the time of the action brought; or, by leave of the Court for the district in which the defendant or one of the defendants shall have dwelt or carried on his business, at some time within six calendar months next before the time of the action brought, or in which the cause of action arose, such summons may issue in either of such last-mentioned Courts (*a*). The 19 & 20 Vict. c. 108, s. 15 gave power to the Registrar of any County Court to "issue a summons against any defendant residing out of the jurisdiction of such Court, at any time, upon the application of any plaintiff who will depose before such Registrar that his cause of action has arisen within the jurisdiction of such Court, in like manner as any Judge of any County Court has now power to issue any such summons."

(*a*) Certain exceptions existed and still exist which may be mentioned here instead of incumbering the text with a reference to them. By s. 19 of the 19 & 20 Vict. c. 108, Judges of the

Both the above sections are repealed by the new Act (see Schedule C, *post*).

The material alteration effected in the law by the first section of the new Act consists, so far as relates to actions, in the substitution, by s. 1, of the district in which "the cause of action or suit wholly *or in part* arose," for the district in which "the cause of action arose." The words "the cause of action," were construed to mean the *whole* cause of action, and therefore leave to sue could not be properly given unless the whole cause of action (that is to say, everything material and essential for a plaintiff to prove in support of his case) arose in the district. (See Manual of Practice and Evidence in the County Courts, 3rd edit. pp. 31, 32.) This led to considerable inconvenience and hardship, examples of which have been already given in the introduction (*a*).

The only other alteration in the law consists in giving the Registrar the same power as the Judge in granting leave to sue in any particular district. Application for leave must be made in the district in which it is intended to sue, and the new rules require that the Judge or Registrar shall be satisfied by statement on oath or affidavit, or statutory declaration of the plaintiff or of some other person on his behalf, that the defendant or one of the defendants has within the then last six calendar months dwelt or carried on business in the district of the Court, or that the cause of action or suit arose wholly or in part within the said district. (Rule 34, 39). And see General Form of Heading and Conclusion of Affidavits, prefixed to the new Forms in Common Law.

The affidavit may be sworn before the Judge or Registrar, without the payment of any fee, or before a Commissioner to administer oaths in Chancery in England, or a London Commissioner to administer oaths in Chancery, or a Commissioner

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Court may sue and be sued in any adjoining district of which he is now the Judge (see Manual of Practice and Evidence, 3rd edit. p. 34); and by s. 21, an officer of a County Court may be sued in the district of which he is an officer, or in an adjoining district, the Judge of which is not the Judge of a Court of which the defendant is an officer.

By s. 18 of the same Act, where the plaintiff dwells or carries on business in the district of a Metropolitan County Court (Bloomsbury, Brompton, Clerkenwell, Lambeth, Marylebone, Shoreditch, Southwark, Westminster, or Whitechapel) and the defendant dwells or carries on business in the district of any of those Courts, the summons may issue and be served in the district in which either the plaintiff or the defendant dwells or carries on business. (For the precise effect of this provision see the Manual of Practice and Evidence, 3rd edit. pp. 33, 34; see also s. 3 of the new Act, *post*, p. 29.)

Plaints against tenants for the recovering possession of tenements must be brought in the County Court of the district in which the premises lie. (19 & 20 Vict. c. 108, s. 50.)

As to Actions of Ejectment, see s. 11 of the new Act, and observations upon it, *post*, p. 37.

As to the change of Venue in actions, from one County Court district to another, see Manual of Practice and Evidence, 3rd edit. p. 85.

(*a*) See *ante*, pp. 2, 3.

for taking affidavits in any superior Court, such Commissioners respectively not being Registrars, or before a Justice of the Peace. (19 & 20 Vict. c. 108, s. 58.)

It will be useful, in reference to this point of where a summons is to be issued, to refer to various cases applicable to the new practice.

Suing in the District where the Defendant dwells or carries on Business.] The general rule, now, as before, is, that the dwelling-place or place of business of the defendant or (if more than one joint defendant) of one of them, determines the district in which the plaint is to be entered, for there the plaintiff has a right, and requires no permission to sue.

Dwelling-place or Place of Business.] In the case of trading corporations these are identical, for a corporation may be said to dwell where it carries on its business (see *Taylor* v. *The Crowland Gas Co.*, 11 Exch. Rep. 1; 24 L. J. Rep. (N.S.) Exch. 233), that is to say, where it carries on business by its servants as distinguished from agents (*Corbett* v. *The General Steam Navigation Co.*, 28 L. J. Rep. (N.S.) Exch. 214; *Oldham Building Co.* v. *Heald*, 33 L. J. Rep. (N.S.) Exch. 236). A registered Joint Stock Company, for the manufacture and sale of goods, was held to carry on business at the place of manufacture and sale, and not at the registered office of the company where the directors meet (*Keynsham Blue Lias and Cement Co.* v. *Baker*, 33 L. J. Rep. (N.S.) Exch. 41); but on the other hand, the business of an incorporated company and its "dwelling" is not necessarily where the subject-matter of the company exists; and a promenade pier company taking tolls from passengers upon it, may nevertheless carry on its business in London, where the registered office of the company is situated (*Aberystwith Promenade Pier Co.* v. *Cooper*, 35 Law J. Rep. (N.S.) Q. B. 44.)

A railway company is to be deemed to dwell and carry on business at the principal office only, and not at every station on the line (see *Adams* v. *The Great Western Railway Co.*, 30 L. J. Rep. (N.S.) Exch. 124; *Sheils* v. *Great Northern Railway Co.*, Id. Q. B. 331; *Brown* v. *London and North Western Railway Co.*, 32 L. J. Rep. (N.S.) Q. B. 318.) The Great Western Railway Company, therefore, dwells and carries on business at Paddington, and the Great Northern Railway Company at King's Cross, and the London and North-Western Railway Company at Euston Station (*a*).

(*a*) This construction of the Act in reference to railway companies led to considerable hardship on suitors in cases of breach of contract by a railway company. If a person living at Stafford, claimed damages for the loss or damage to goods conveyed by the London and North-Western Railway Company from Liverpool to Stafford, although the company's line ran through the County Court district in which the claimant resided, and the goods ought to have been safely delivered within that district, he was in general driven, if he sued in the County Court, to sue the Company in London (as the place where the Company carried on business), for the cause of action, namely, the contract to carry, or delivery of the goods, and the breach, rarely arises within one County Court district.

To compel a claimant in such cases for small amounts to sue in the superior Courts or in the Metropolitan County Courts was equivalent to a denial of redress.

A clerk who goes daily to a place of business does not carry on his business there (*Buckley* v. *Hann*, 5 Exch. Rep. 43; 19 Law J. Rep. (N.S.) Exch. 154); nor is a clerk to the Privy Council a person who carries on his business at the Privy Council (*Sangster* v *Kay*, 5 Exch. Rep. 386; 19 Law J. Rep. (N.S.) Exch. 314); but a surgeon and apothecary carries on business in a district where he daily attends patients, although resident out of it (*Mitchell* v. *Hender*, 22 Law J. Rep. (N.S.) Q. B. 273.)

A confinement in gaol is not a "dwelling" there (see *Dunston* v. *Paterson*, 28 Law J. Rep. (N.S.) C. P. 97.)

A person occupying a house in the country as his home, but carrying on business in London and sleeping there frequently, may be sued in the district in which the country house is situate, as being the dwelling-place, or in London as his place of business, and it seems a person may occasionally be said to dwell at two places (see *Kerr* v. *Haynes*, 29 Law J. Rep. (N.S.) Q. B. 70; *Butler* v. *Ablewhite*, 28 Id. (N.S.) C. P. 292; 5 C. B. Rep. (N.S.) 740; *Pegrim* v. *Knatchbull*, 34 Law J. Rep. (N.S.) C. P. 257.)

It seems that a person who has no settled dwelling-place may be treated as dwelling where he is temporarily resident, although on a visit (see *Alexander* v. *Jones*, 35 L. J. Rep. (N.S.) Exch. 78); but in such doubtful cases it will be better to obtain leave to sue in the district where the cause of action wholly or in part arose.

Suing by leave in the District where the Defendant dwelt or carried on Business within six months before Action or Suit.] The cases in which it becomes necessary or desirable to obtain leave to proceed in the district where the defendant, or one of the defendants has dwelt or carried on business within six months, are, generally speaking, where the defendant has subsequently removed, and either has no present certain place of abode, or his residence is so far away from the place where the debt or liability was incurred, as to render the trial of the action more expensive or inconvenient if proceeded for elsewhere (see 'Manual of Practice and Evidence in the County Courts,' 3rd edit., p. 31.)

Suing by leave in the District in which the Cause of Action or Suit wholly or in part arose.] Questions of considerable nicity have arisen, and probably will arise, as to what constitutes part of a cause of action. The cases under the former law are still to a great extent applicable, for those cases where it has been held that the whole cause of action did not arise within any one County Court district (and, therefore, where leave to sue could not hitherto have been given), will now establish a right to sue in any of the districts in which the cause of action arose in *part*; and on the other hand, the instances where it has been held that the cause of action arose wholly in one district, will be a guide to those cases in which the cause of action cannot be said to have arisen in *part* in any other district.

When a defendant gives a verbal order to the plaintiff or his agent in one district (Oxford, for instance), and the goods are sent from and delivered to the railway in another distrtict, where the plaintiff carries on business (*i. e.* Manchester), pursuant to the defendant's instructions, the plaintiff may obtain leave to sue in either district, as the order is part of the cause of action (see *Borthwick* v. *Walton*, 15 C. B. Rep. 501; 24 L. J. Rep.

(N.S.) C. P. 83.) So the signature to a contract is part of the cause of action, and where the contract is signed in one district and performed in another, leave may be granted to sue in either (*Norman* v. *Marchant*, 21 L. J. Rep. (N.S.) Exch. 256; 7 Exch. Rep. 723); but it seems that where a contract for the sale of goods within the statute of frauds is made by parol in one district at one time, and ratified in another district and at another time by part payment or delivery there, the whole cause of action arises in the latter district and at that time, and therefore leave to sue where the parol contract was made would not be granted, as it is no part of the cause of action (see *Aris* v. *Orchard*, 30 L. J. Rep. (N.S.) Exch. 21); and where work is ordered to be done by letter, the district where the letter is received and the work done, is the place where the cause of action for it arises (*Newcombe* v. *De Roos*, 29 L. J. Rep. (N.S.) Q. B. 4.) But where there is a mere negotiation for a sale in one district, and the contract is completed in another, the whole cause of action arises where the contract is completed. Thus, where the plaintiff negotiated with a defendant in one district for the purchase of a horse, but the bargain was not completed, and the next day in another district the bargain is completed, and a warranty given and the horse delivered, the whole cause of action arises in the latter district (see *Aris* v. *Orchard*, *supra*.)

So if goods are ordered at a shop in person or by letter sent there, and they are delivered in the same district to a railway company or other carrier by the purchaser's order or under such circumstances as to vest the goods in the purchaser by such delivery, it seems that leave could not be given to sue in the district where the goods actually reached the purchaser's hands, the whole cause of action arising elsewhere.

Where a person is sued in respect of a contract entered into by his special agent, it seems the agency would be considered a part of the cause of action, so as to give a right to apply for leave to sue in the district where the authority to act was given (see per Byles, J., in *Jackson* v. *Grimley*, 33 L. J. Rep. (N.S.) C. P. 238.)

In the case of an action for a reward offered for the apprehension of a felon, to be paid on conviction, the conviction is a part of the cause of action, and therefore leave might be given to sue in the district where the conviction took place (*Hernaman* v. *Smith*, 10 Exch. Rep. 659; 24 L. J. Rep. (N.S.) Exch. 175).

Where an attorney sued the defendant, an intended mortgagor, for the costs of preparing a mortgage-deed, it was held that a part of the cause of action arose in the district where the defendant had agreed with the intended mortgagee to give a mortgage for a debt, although the instructions to the plaintiff were given and the work done elsewhere (*Jackson* v. *Grimley*, 33 L. J. Rep. (N.S.) C. P. 238.) (*a*)

In an action founded on the acceptance of a bill of exchange, the cause of action arises in the district where the bill was accepted (*Rolf* v. *Miller*, 19 L. J. Rep. (N.S.) C. P. 278); but where an indorsement is relied on (as between indorser *v.* the indorsee), the place of indorsement is a part of the cause of action, for the indorsee has no property without delivery (*Huth* (or

(*a*) This case was decided on the 128th (repealed) section of the 9 & 10 Vict. c. 95.

Heuth) v. *Long*, 19 L. J. Rep. (N.S.) Q. B. 325; 1 L. M. & P. 333.)

In an action by the indorsee *v.* the drawer, the notice of dishonour is part of the cause of action, and leave may be given to sue in the district where such notice was given to the defendant (see *Buckley* v. *Hann*, 19 L. J. Rep. (N.S.) Exch. 151.)

The points above mentioned as to the cause of action arise in cases where the subject-matter of the contract is in its nature single, as, for example, the sale of a horse or other animal.

Questions, however, will probably arise as to the cause of action in cases where a tradesman sues for a series of articles delivered at different times and in different places. Take the case of a bill delivered for butcher's meat, or for clothes ordered from time to time at the butcher's or tailor's shop in district A, and delivered to the defendant, part in that district, and part subsequently, to the defendant, in district B. The defendant has removed to a distance, and the butcher or tailor (in consequence of having himself removed to B, or from some other cause), asks leave to sue in B. Can leave be safely given to him? It is clear that the claimant might obtain leave to sue for the whole in A, because the whole cause of action as to part, and part of the cause of action as to the remainder (the *order* for the goods delivered in B), arose there. It is also clear that (if leave were given him) he might recover in B for so much of his bill as related to goods *delivered* there, but can he recover in B for that part of the amount due in respect of goods both ordered and delivered in A? It seems that he might do so on the ground that when a bill has been delivered for the whole amount of a tradesman's account, the items become one cause of action, and the delivery of some of the articles contained in that bill, constitutes part of the cause of action for the whole (see *Bonsey* v. *Wordsworth*, 18 C. B. Rep. 325; 25 L. J. Rep. (N.S.) C. P. 205; *Wood* v. *Perry*, 3 Exch. Rep. 442; 18 L. J. Rep. (N.S.) Exch. 161) (*a*); *Copeman* v. *Hart*, 33 L. J. Rep. (N.S.) C. P. 107.)

Points of this kind are of great importance, for in the cases just put, it would not do for the claimant to proceed in B, and take the chance of recovering the whole or only part there; for if he failed as to part (on the ground that no part of the cause of action arose there), it is at least doubtful whether he could afterwards recover the balance in district A, as a plaintiff cannot divide any cause of action for the purpose of bringing two or more suits (see 9 & 10 Vict. c. 95. s. 63; *Grimbly* v. *Aykroyd*, 1 Exch. Rep. 479; 17 L. J. Rep. (N.S.) Exch. 157; and other cases and observations in the 'Manual of Practice and Evidence in the County Courts,' 3rd edit pp. 3–6.)

In no case, moreover, does the fact of leave having been granted, give the particular County Court in which such leave has been granted jurisdiction over the case. It must still appear on the hearing that the cause of action wholly or in part arose within it; and on the other hand, the leave of the Judge or Registrar is a condition precedent to the jurisdiction of the Judge

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(*a*) Although these cases were decided on section 128 of the 9 & 10 Vict. c. 95 (a section repealed by the new Act), they appear to be applicable to the question in the text as to obtaining leave to sue in a particular district, on the ground that part of the cause of action arose there.

to try the case (see *Brown* v. *The London and North-Western Railway Co.*, 32 L. J. Rep. (N. S.) Q. B. 318.)

The insertion in the first section of the word "suit," as distinguished from "action" ("action *or* suit") leads to the inference that the provisions of the first section were intended to apply to plaints in equity. The 28 & 29 Vict. c. 99, conferring on the County Courts a limited jurisdiction in equity, contains, however (s. 10), special provisions with respect to the Court in which proceedings in equity shall be taken (see Davis's Equitable Jurisdiction Act, pp. 37, 38); and as the new Act is to be construed as one Act with the 28 & 29 Vict. c. 99 (and other Acts), the first section of the new Act must be read as inapplicable to suits in equity. The new orders and rules in equity confirm this view (see *post*, 'Orders and Rules in Equity,' order 1, rule 1.) See also the observations on s. 9 of the new Act, *post*, p. 34.

In certain actions in County Courts plaintiff may issue summons, and if defendant shall not give notice of intention to defend, judgment may be entered up.

2. In any action brought in a County Court for the price or value of goods or chattels which or some part of which were sold and delivered to the defendant to be dealt with in the way of his trade, profession, or calling, the plaintiff may, at his option, cause to be issued a summons in the ordinary form, or (upon filing an affidavit to the effect set forth in the form given in schedule (A.) to this Act) in the form contained in the schedule (B.) to this Act, and if such last-mentioned summons be issued it shall be personally served on the defendant by the bailiff of the Court, or, at the option of the plaintiff, by the plaintiff, his attorney, or by some clerk or servant in the permanent employ of the plaintiff or his attorney, twelve clear days at the least before the return day thereof, and then if the defendant shall not, at least six clear days before such return day, give notice in writing, signed by himself, his attorney, or agent, to the Registrar of the Court from which the summons issued, of his intention to defend, the plaintiff may, within two months after such return day, without giving any proof of his claim, have, upon proof by affidavit of the service of the summons, judgment entered up against the defendant for the amount of his claim and costs, such costs to be taxed by the Registrar: and the order upon such judgment shall be for payment forthwith, or at such time or times, and by such instalments, if any, as the plaintiff or his attorney or agent shall in writing have consented to take at the time of the entry of the plaint: Provided that where the defendant shall give such notice as above specified, the action shall be heard in the ordinary course; but in any event the Registrar shall, immediately after the last day for giving such notice, send a letter to

the plaintiff by post, stating therein whether the defendant has or has not given notice of his intention to defend.

See the general observations on this section, *ante*, p. 9.

Under the former law (not affected by the new Act), a plaintiff in an action for a debt or liquidated money demand exceeding £20 might issue a summons in the same form as is given in the above section of the new Act (see 19 & 20 Vict. c. 108, ss. 28 and 29, and Manual of Practice and Evidence, 3rd edit. p. 49–51.) A summons issued under 19 & 20 Vict. must, however, be served in the ordinary way by the officer of the Court, and judgment must be entered up "on or within one month after the return day," instead of, as under the new Act, "within two months after such return day." (Under these words, of course judgment may be entered *on* the return day), and that will be the usual time (see *post*, Rule No. 112.)

The combined effect of these powers is apparent. Proceedings for judgment by default may be taken in an action for any debt or liquidated money demand exceeding £20; or in an action for any amount, however small, for the price or value of goods or chattels which, or some part of which, were sold and delivered to the defendant to be dealt with in the way of his trade, profession, or calling. Proceedings for judgment by default cannot, therefore, be taken, it seems, for the price or value of goods under £20, bargained and sold and not delivered, for the amount would take it out of the former power, and the want of *delivery* of any part of the goods would, it seems, prevent the application of the new Act. So in an action for not accepting goods, whatever the amount claimed may be, the plaintiff cannot proceed as for a judgment by default, for such an action is not for a debt or liquidated money demand within the former powers, nor is it an action for the *price* or *value* of goods sold and *delivered*. (See the distinctions between these actions, and the evidence, Manual of Practice and Evidence in the County Courts, 3rd edit. pp. 226,374, 384.)

The plaint on which a summons to obtain judgment by default is issued, may be entered, as in ordinary cases, either where the defendant or one of them dwells or carries on his business, or by leave, where he has dwelt or carried on business within six months, or where the cause of action wholly or in part arose.

See the new Rules, *post* (Nos. 40, 41, 42, 99, 112), applicable to this section.

Proceedings commenced in a Metropolitan County Court to be continued therein if defendant resides in the districts of one of such Courts.

3. Where an action is brought in any of the County Courts mentioned in the section numbered eighteen of the Act passed in the session of Parliament holden in the nineteenth and twentieth years of the reign of her Majesty, chapter one hundred and eight, all subsequent proceedings in such action shall be taken and had in such Court if the party against whom the proceeding is taken or had shall reside or carry on business within the district of any of such Courts or within the City of London. An action may be commenced, and all subsequent proceedings taken and had, in the

Court held under the provisions of "The London (City) Small Debts Extension Act, 1852," by a plaintiff residing or carrying on business within the City of London, against a defendant who resides or carries on business within the district of any of such Courts; and an action may be commenced, and all subsequent proceedings taken and had, in any of such County Courts by a plaintiff residing or carrying on business within the district of any such County Court, against a defendant who resides or carries on business within the City of London.

See the observations in the Introductory Chapter, *ante*, p. 3; and *post*, Rule 64 of the New Rules.

The effect of this section is to assimilate the City of London Court (which is made a County Court in most other respects by s. 35 of the new Act) to the Metropolitan Courts of Bloomsbury, Brompton, Clerkenwell, Lambeth, Marylebone, Shoreditch, Southwark, Westminster, and Whitechapel, in respect of the right to institute proceedings. This does not affect the power under s. 1 to sue (by leave) where the cause of action arose wholly or in part.

No action for beer, etc., consumed on the premises to be brought.

4. No action shall henceforth be brought or be maintainable in any Court to recover any debt or sum of money alleged to be due in respect of the sale of any ale, porter, beer, cider, or perry which after the commencement of this Act was consumed on the premises where sold or supplied, or in respect of any money or goods lent or supplied, or of any security given, for, in, or towards the obtaining of any such ale, porter, beer, cider, or perry.

See the observations, *ante*, p. 12.

For the corresponding provisions of the statutes 24 Geo. 2. c. 40, s. 12 (commonly called the Tippling Act), as amended by the 25 & 26 Vict. c. 38, relating to the sale of spirits, see Manual of Practice and Evidence in the County Courts, 3rd edit. pp. 252, 253.

The prohibition of any action in "respect of any money or goods lent or supplied, or of any security given, for, in, or towards the obtaining of any such ale," etc., may have a very different and much wider effect than that which was intended by the framer of the section. The section was intended to prohibit actions *by the person selling or supplying the ale, etc.*

Costs not recoverable in superior Courts where less than £20 on contract, or £10 on tort.

5. If in any action commenced after the passing of this Act in any of her Majesty's superior Courts of Record the plaintiff shall recover a sum not exceeding twenty pounds if the action is founded on contract, or ten pounds if founded on tort, whether by verdict, judgment, by default, or on demurrer, or otherwise, he shall not be entitled to any costs of suit unless the

Judge certify on the record that there was sufficient reason for bringing such action in such superior Court, or unless the Court or a Judge at Chambers shall by rule or order allow such costs.

The previous and now repealed provisions of the County Court Acts respecting costs of actions brought in the superior Courts, and the changes effected by the above section, have been noticed in the introductory Chapter, *ante*, p. 4–9.

Without attempting to lay down or even speculate on any rule which the superior Courts are at liberty to adopt with reference to what constitutes a sufficient reason for bringing an action in the superior Courts, it may be observed that a Judge would, in almost all cases, certify under this section in an action in which the title to any toll, fair, market, or franchise (as distinguished from an incorporeal hereditament) shall be in question, or in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed; or for any malicious prosecution, or for any libel or slander, or for seduction, or for breach of promise of marriage, as none of these actions can be brought by a plaintiff in a County Court as a matter of right. (See 9 & 10 Vict. c. 95, s. 58, and *ante*, p. 7.)

The provisions now in force respecting the limitation of costs, irrespective of s. 5 of the new Act, are of so much importance to suitors and to their legal advisers as to render it desirable to devote a separate chapter to the question of costs of actions (see *post*, p. 53.)

Repeal of s. 17 of 3 & 4 Will. IV. c. 42, authorizing the trial of issues before a Sheriff where sum claimed does not exceed £20.

6. The section numbered seventeen of the Act passed in the session of Parliament holden in the third and fourth years of the reign of his late Majesty King William the Fourth, chapter forty-two, which enables a superior Court, or a Judge thereof, to direct issues to be tried before a Sheriff or a Judge of an inferior Court of record where the sum sought to be recovered does not exceed twenty pounds, and the Court or Judge is satisfied that the trial will not involve any difficult question of fact or law, shall be and the same is hereby repealed.

The additional facilities given by the new Act to defendants to remove actions of contract from the superior courts to the County Courts, render the power given by the 3 & 4 Will. IV. c. 42, no longer necessary.

As to the effect of this repeal on the directions of the superior Courts of Hilary Term, 1853, to Taxing Masters, see the observations appended to s. 10, *post*, p. 36.

In certain cases Judge of superior Courts may order cause to be tried in County Court.

7. Where in any action of contract brought or commenced in any of her Majesty's superior Courts of common law, the claim endorsed on the writ does not exceed fifty pounds, or where such claim, though it originally exceeded fifty pounds, is reduced by payment, an admitted set-off, or otherwise, to a sum not exceeding fifty pounds, it shall be lawful for the

defendant in the action, within eight days from the day upon which the writ shall have been served upon him, if the whole or part of the demand of the plaintiff be contested, to apply to a Judge at chambers for a summons to the plaintiff to show cause why such action should not be tried in the County Court or one of the County Courts in which the action might have been commenced; and on the hearing of such summons the Judge shall, unless there be good cause to the contrary, order such action to be tried accordingly, and thereupon the plaintiff shall lodge the original writ and the order with the registrar of the County Court mentioned in the order, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the registrar to both parties or their attorneys, and the cause and all proceedings therein shall be heard and taken in such County Court as if the action had been originally commenced in such County Court; and the costs of the parties, in respect of proceedings subsequent to the order of the Judge of the superior Court, shall be allowed according to the scale of costs in use in the County Courts, and the costs of the proceedings previously had in the superior Court shall be allowed according to the scale in use in such latter Court.

See observations in the Introductory Chapter, *ante*, pp. 3, 4, and the New Rules, *post*, nos. 68, 69, 131.

"The County Courts Act," 1856 (19 & 20 Vict. c. 108), s. 26 (still in force), enacts that, "where, in any action of contract brought in any superior Court, the claim endorsed on the writ does not exceed fifty pounds, or where such claim, though it originally exceeded fifty pounds, is reduced by payment into Court, payment, an admitted set-off, or otherwise, to a sum not exceeding fifty pounds, a Judge of a superior Court, on the application of either party after issue joined, may, in his discretion, and on such terms as he shall think fit, order that the cause be tried in any County Court which he shall name, and thereupon the plaintiff shall lodge with the registrar of such Court such order and the issue; and the Judge of such Court shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the registrar to both parties or their attorneys; and after such hearing, the registrar shall certify the result to the master's office of such superior Court, and judgment, in accordance with such certificate, may be signed in such superior Court."

It will be seen on a careful comparison of the 7th section of the new Act with the previous power, how widely they differ.

First, under the Act of 1856, the issue is merely *sent for trial* before the County Court Judge, the action remaining in the superior Court, and judgment being signed there after the trial, while, under the new Act, the action is, in fact, transferred to the County Court, where all subsequent proceedings are heard and taken.

A second distinction is that while under the Act of 1856 the application can only be made after issue joined, under the new Act it must be made within eight days from the service of the writ.

Thirdly, under the Act of 1856 the application may be made by either party, under the new Act it can only be made by the defendant.

Fourthly, a distinction in reference to costs requires to be pointed out.

In a case sent for trial under the Act of 1856, the right of a plaintiff to costs will be the same as if the action were tried in the superior Court (except that the Judge of the County Court could not, it would seem, certify under s. 5 of the new Act; "Judge," in that section, evidently applying only to the Judge of the superior Court). If the plaintiff does not recover a sum exceeding twenty pounds, he will not (in accordance with s. 5 of the new Act) be entitled to any costs of suit, unless the Court or Judge at chambers shall, by rule or order, allow such costs. (See s. 5 of the new Act, *ante*, pp. 30, 31.)

In an action transferred under s. 7 of the new Act, the parties will, it seems (subject to an observation, *post*, pp. 65, 66), be entitled to costs, without any power to withhold them, whatever may be the amount recovered, for although an action removed under s. 7 and tried in the County Court, and a verdict given there for a sum not exceeding twenty pounds, may be said to be within the precise words of s. 5, it is probable that s. 5 would be construed to refer to an action, not only commenced but terminating in a superior Court. Apart from that, the latter part of s. 7 appears to give the costs to the successful party, whether plaintiff or defendant, without reference to the amount.

See observations appended to s. 10, *post*, p. 36, as to the *quantum* of costs, also applicable to s. 7.

With respect to the words "*admitted set-off*" in s. 7, it is to be observed, that they mean a set-off which the plaintiff chooses to admit at the time of action brought. *Walesby* v. *Gouldstone*, 1 Law Rep. C. P. 567; 35 Law J. Rep. (N. S.) C. P. 302. (*a*)

Some questions may arise as to the application of ss. 7 and 10, where causes of actions on contracts and on tort are combined under the Common Law Procedure Act, or where there are several defendants.

Proceedings in Equity may be transferred to County Courts, which might have commenced therein.

8. Where any suit or proceeding shall be pending in the High Court of Chancery, which suit or proceeding might have been commenced in a County Court, it shall be lawful for any of the parties thereto to apply at chambers to the Judge to whose Court the said suit or proceeding shall be attached to have the same transferred to the County Court or one of the County Courts in which the same might have been commenced, and such Judge shall have power upon such application, or without such application, if he

(*a*) That case was decided in reference to the same words in the 19 & 20 Vict. c. 108, s. 24, and there does not seem to be any reason for applying a different construction to them in s. 7 of the new Act.

shall see fit, to make an order for such transfer, and thereupon such suit or proceeding shall be carried on in the County Court to which the same shall be ordered to be transferred, and the parties thereto shall have the same right of appeal that they would have had had the suit or proceeding been commenced in the County Court.

See the observations in the Introductory Chapter, *ante*, p. 4, and as to the nature of the suit or proceeding which might have been commenced in a County Court, see Davis's 'County Courts Equitable Jurisdiction Act,' and also s. 9 of the new Act, *infra*, and the new Orders and Rules in Equity, Order XVIII., Rules 2, 3, and 4, *post*. As in Equity, the costs of suits are discretionary and not a matter of right, as in the Courts of Law, neither the County Court Equitable Jurisdiction Act, nor the present Act, compels parties to adopt the County Courts as the tribunal for deciding equitable claims, either directly or by positively prohibiting the allowance of costs, but the question of costs is left to the Court to grant or withhold costs. (See *Scotto* v. *Heritage*, 3 Law Rep. Equity, 212; 36 Law J. (N. S.) Chancery, 123.)

The new Act, by giving power to any of the parties to apply to transfer a suit to the County Court, takes away, in some measure, from the right of an unsuccessful defendant to set up as a ground for the suit being dismissed without costs, that it was unnecessary to resort to the superior Courts of equity.

Suits in which jurisdiction under 28 & 29 Vict. c. 99, may be exercised.

9. The jurisdiction which is given by the Act passed in the session holden in the twenty-eighth and twenty-ninth years of the reign of Her Majesty, intituled an Act to confer on the County Courts a limited jurisdiction in Equity, so far as relates to cases coming within the fourth head of the first section of the said Act, may, from and after the passing of this Act, be exercised in all suits for specific performance of or for the reforming, delivering up, or cancelling of any agreement for the sale, purchase, or lease of any property where, in the case of a sale or purchase, the purchase-money, or in the case of a lease, the value of the property, shall not exceed five hundred pounds.

See the observations in the Introductory Chapter, *ante*, p. 2.

This section remedies, or attempts to remedy, a very material although verbal omission in the County Courts Act, 1865, (28 & 29 Vict. c. 99) as well as extends its operation.

The fourth head of the first section of that Act gave the County Court an equitable jurisdiction "in all suits for specific performance, or for the delivering up or cancelling any agreement for the sale or purchase of any property, where the purchase-money shall not exceed the sum of five hundred pounds." (See *Willcox* v. *Marshall*, 36 Law J. Rep. (N. S.) Ch. 358.)

In consequence of the omission of the word "of" after "specific performance," the precise effect of the above head, was to give the County Court jurisdiction in *all* suits for specific per-

formance, although it was intended to be confined to agreements for the sale or purchase of any property where the purchase-money shall not exceed £500. ('Davis's County Court Equitable Jurisdiction Act,' note (*a*), p. 21.)

Section 9 of the new Act introduces the omitted word 'of' and is intended to wholly supersede the fourth head of the original Act. It is to be regretted that this intention was not carried out by expressly repeating the 4th head. As the 9th section is framed it is capable of being read simply as an *extension* of jurisdiction, leaving the 4th head to stand as before with the doubtful jurisdiction "in *all* suits for specific performance."

See the new Orders and Rules in Equity, *post*.

Actions for malicious prosecution, etc., brought in superior Courts may be remitted to County Court by Judge.

10. It shall be lawful for any person against whom an action for malicious prosecution, illegal arrest, illegal distress, assault, false imprisonment, libel, slander, seduction, or other action of tort may be brought in a superior Court to make an affidavit that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff, and thereupon a Judge of the Court in which the action is brought shall have power to make an order that unless the plaintiff shall, within a time to be therein mentioned, give full security for the defendant's costs to the satisfaction of one of the Masters of the said Court, or satisfy the Judge that he has a cause of action fit to be prosecuted in the superior Court, all proceedings in the action shall be stayed, or in the event of the plaintiff being unable or unwilling to give such security, or failing to satisfy the Judge as aforesaid, that the cause be remitted for trial before a County Court to be therein named; and thereupon the plaintiff shall lodge the original writ and the order with the Registrar of such County Court, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the Registrar to both parties or their attorneys; and the County Court so named shall have all the same powers and jurisdiction with respect to the cause as if both parties had agreed, by a memorandum signed by them, that the said County Court should have power to try the said action, and the same had been commenced by plaint in the said County Court; and the costs of the parties in respect of the proceedings subsequent to the order of the Judge of the superior Court shall be allowed according to the scale of costs in use in the County Courts, and the costs of the proceedings in the superior Court shall be allowed according to the scale in use in such latter Court.

See the general observations on this section in the Introduc-

tory Chapter, *ante*, p. 4, and the new Rules Nos. 70, 71, 72, 75, 94, 131.

A question arises as to the quantum of costs to be allowed under ss. 7 and 10 of the new Act. This question arises in consequence of the repeal of s. 17 of the 3 & 4 Will. 4, c. 42 (see s. 6 of the new Act, *ante*, p. 31) and the language of the new Act and the new Rules of the County Courts. Hitherto the taxing masters of the superior Courts, acting under directions (Reg. Gen. Hil. T. 1853) of the Judges of the superior Courts framed expressly in reference to s. 17 of the 3 & 4 Will. 4. c. 42, have taxed the costs of actions on *contract* other than cases wherein by reason of the nature of the action, no writ of trial can by law be issued, where the sum recovered or paid into Court shall not exceed £20, on a lower scale and all other actions on a higher scale. As these directions were held to apply only to cases when a writ of trial could be issued under s. 17 of the 3 & 4 Will. 4, c. 42 (see *Jacquot* v. *Boura*, 5 M. & W. 155), the repeal of that section might well be construed as putting an end to the lower scale of costs, even in actions of contract; but be that as it may, the lower scale never applied to actions of tort. (See 'Gray on Costs,' pp. 172, 173.)

Further, the Directions of Hilary Term, 1853, direct the defendant's costs (if any) when a plaintiff claims but does not recover more than £20, to be taxed upon the higher scale.

The new Rules of the County Court, however, proceed on the assumption that the scales of costs of Hil. T. 1853 apply to all actions and parties. The new Act enacts, in both ss. 7 and 10, that the costs of the parties in respect of proceedings had in the superior Court shall be allowed according to *the scale in use in such latter Court*. The new Rules carry this direction further, by directing (Rule 131) that the costs incurred in the superior Court previous to the transmission of the cause to the County Court (under s. 7 or s. 10 of the new Act) shall be taxed according to the scale of costs and fees in use in such superior Court "*the schedules of which are annexed to these Rules.*" Those annexed schedules are the schedules of costs appended to the above-mentioned directions (Hilary Term, 1853) making but one distinction; "above £20" and "under £20." It may be urged, that whatever might be otherwise the effect of the repeal of s. 17 of the 3 & 4 Will. c. 42, the new Rule (131) perpetuates and gives force to the lower scale. It may be doubted, however, whether that new Rule (No. 131) can have that effect. When, in ss. 7 and 10, "the scale in use" in the superior Courts is spoken of, the scale in use for the time being for actions of the kind mentioned in the section, must be intended. Now the lower scale even if still applicable to cases under s. 7, is not in use in actions of tort enumerated in s. 10, and as that section gives the parties a right to costs according to the scale in use, it may be well urged that a mere County Court Rule cannot cut down that right by fixing on another particular scale not in use in the superior Courts in reference to such actions.

Suppose new scales of costs of general application were adopted to-morrow in the superior Courts, of what force would the schedules of costs referred to in Rule 131 be, in face of the 10th section of the new Act?

The Registrars of County Courts, however, will doubtless simply follow the directions of Rule 131, and there may be some difficulty in a plaintiff or defendant raising the question

of his right to have his costs taxed on the scale actually in use in the superior Courts as distinguished from the scale referred to in Rule 131. Perhaps the refusal of the Registrar to tax on the scale required, might be treated as a refusal to do an act relating to the duties of his office, so as to admit of the question being raised on an application for a rule to the superior Court, under the 19 & 20 Vict. c. 108, s. 43 (as amended by the 21 & 22 Vict. c. 74, s. 4).

The costs incurred in the superior Courts before removal cannot, however, be of a large amount, for although s. 10 does not (like s. 7) require an application for removal to be made within a certain time, the application ought to be made promptly. Nevertheless it cannot well be made before the plaintiff declares, for the writ does not give any information as to the nature of the action. When notice of action is required and given, the nature of the action is, of course, disclosed, and application might be made under s. 10 immediately on the issue of the writ. On the other hand, many actions of tort are commenced and afterwards abandoned, and it would be rather hard to require a defendant to go to the expense of applying under s. 10 until it is manifest that the plaintiff intends to proceed to trial.

Action of ejectment may be brought where annual value of property does not exceed £20.

11. All actions of ejectment where neither the value of the lands, tenements, or hereditaments, nor the rent payable in respect thereof, shall exceed the sum of twenty pounds by the year, may be brought and prosecuted in the County Court of the district in which the lands, tenements, or hereditaments are situate.

See observations in the Introductory Chapter, *ante*, p. 1, and the proviso to s. 12 *infra* (which, as it is confined to actions of ejectment, ought to have been appended to s. 11); and as to appeals in ejectment, see s. 13, *post*, p. 39.

This jurisdiction in ejectment does not affect the previously-existing jurisdiction of the County Court in proceedings in the nature of ejectment by landlords against tenants to recover possession, under the County Courts Act, 1856 (19 & 20 Vict. c. 108). (See as to such actions, and the evidence, the 'Manual of Practice and Evidence in the County Courts,' 3rd edition, part i., chapter 12, and part ii., chapter 25, pp. 163–168, and pp. 578–587; and the New Rules, Nos. 223–256, *post*.)

The new jurisdiction under s. 11 may be applied to ejectment by a landlord against tenant, where the old law would be inapplicable; as where the tenant is in a position to dispute, and does dispute, a landlord's derivative title; but "where proceedings to recover possession of a tenement can be taken under the provisions of "the County Courts Act, 1856," no action of ejectment shall be brought under "the County Courts Act, 1867." (Rule 255, *post*.)

Court may try cases where title comes in question where neither value nor rent of

12. The County Courts shall have jurisdiction to try any action in which the title to any corporeal or incorporeal hereditaments shall come in question where neither the value of the lands, tenements, or hereditaments in dispute, nor the rent payable in respect

property exceeds £20.

thereof, shall exceed the sum of twenty pounds by the year, or in case of an easement or licence where neither the value nor reserved rent of the lands, tenements, or hereditaments in respect of which the easement or licence is claimed, or on, through, over, or under which such easement or licence is claimed, shall exceed the sum of twenty pounds by the year: Provided that the defendant in any such action of ejectment, or his landlord, may, within one month from the day of service of the writ, apply to a Judge at chambers for a summons to the plaintiff to show cause why such action should not be tried in one of the superior Courts, on the ground that the title to lands or hereditaments of greater annual value than twenty pounds would be affected by the decision in such action; and on the hearing of such summons, the Judge, if satisfied that the title to other lands would be so affected, may order such action to be tried in one of the superior Courts, and thereupon all proceedings in the County Court in such action shall be discontinued.

See the observations in the Introductory Capter on the jurisdiction created by this section, *ante*, p. 1, and the new County Court Rules, Nos. 257, 258, *post*.

For the purpose of this section, a corporeal hereditament may be described as *land*, including houses and other buildings, as well as land covered with water; and an incorporeal hereditament as including easements (the right to ways, watercourses, lights, common including common of pasture, turbary, digging for coals, minerals, stones, or clay, common of fishing), rent charges, chief rents, annuities, and offices. (A question as to the validity of an appointment to the office of parish clerk, and the right of the clerk to an ancient customary payment by householders, involves the title to an incorporeal hereditament. (*In re Stephenson* v. *Baine*, 23 L. J., Q. B. 62; 2 E. & B. 744).

The jurisdiction conferred is not merely where the action is brought to try a question of title, but where it comes in question incidentally.

It is scarcely necessary to observe that questions of title may be raised in many descriptions of actions or forms of complaint, —as in ejectment, or trespass to land, or disturbance of easements, or in defences to actions for assault, taking goods, impounding cattle, etc.; and, although the section speaks of the *claim* of an easement or licence, it is to be observed that an easement may be "claimed" or set up by way of answer to an action of trespass, and the *claim* of a licence generally arises by way of answer or defence to an action.

It is remarkable that the proviso to s. 12 (which was not in the bill as originally introduced into the House of Lords) is confined to actions of ejectment. It may be the result of a somewhat hasty legislation, to be traced in the use of the word "writ," as applied to County Court process,—a slip which has been noticed in the New Rules. (See Rule 226, *post*.)

13. An appeal from the decision of a County Court on the same grounds and subject to the same conditions as are provided by section fourteen of the Act of the thirteenth and fourteenth years of the reign of her present Majesty, chapter sixty-one, shall be allowed in all actions of ejectment, and in all actions in which the title to any corporeal or incorporeal hereditament shall have come in question, and, with the leave of the Judge, an appeal shall be allowed in actions in which an appeal is not now allowed, if the Judge shall think it reasonable and proper that such appeal should be allowed. Appeal in actions of ejectment and in actions where title comes in question, and, by leave of the Judge, allowed in all actions in which it is not now allowed.

See the observations in the Introductory Chapter, *ante*, p. 11; and as to appeals in the County Court, see 'The Manual of Practice and Evidence in the County Courts,' 3rd edition, part i., chapter 8, pp. 124–129, and the New Rules, *post*, Nos. 186–197.

14. Whenever an action or suit is brought in a County Court which the Court has no jurisdiction to try, the Judge shall order the cause to be struck out, and shall, unless the parties consent to the Court having jurisdiction to try the same, have power to award costs in the same manner, to the same extent, and recoverable in the same manner, as if the Court had jurisdiction in the matter of such plaint, and the plaintiff had not appeared, or had appeared and failed to prove his demand. Court may award costs where cause is struck out for want of jurisdiction.

See the observations in the Introductory Chapter, *ante*, p. 2. Heretofore, where a successful objection was taken to the jurisdiction of the Court to entertain the plaint, the Court could not even direct a nonsuit or award costs, but simply strike the cause out. (*Lawford* v. *Partridge*, 26 Law J. Rep. (N. S.), Exch. 147; and see 'Manual of Practice and Evidence in the County Courts,' 3rd edit. p. 114.)

15. The Judges of County Courts appointed or to be appointed by the Lord Chancellor from time to time to frame rules and orders for regulating the practise of the Courts and forms of proceeding therein under the thirty-second section of "The County Courts Act, 1856," shall be empowered to frame a scale of costs and charges to be paid to counsel and attorneys with respect to all proceedings which are herein authorized to be taken, or with respect to proceedings in plaints for the recovery of tenements, or in actions of replevin, and from time to time to amend such scale; and such scale or amended scale, certified under the hands of such Judges, or any three or more of them, shall be submitted to the Lord Chancellor, Scale of costs to be framed by the Judges.

who from time to time may allow or disallow or alter the same, and the scale or amended scale so allowed or altered shall, from a day to be named by the Lord Chancellor, be in force in every County Court.

See the Scale of Costs framed and authorized under this section, *post*, and the Chapter on Costs, *post*, p. 58.

Proceedings where defendant does not appear.

16. If in any action founded on contract a defendant shall not appear at the hearing, either in person or by some person duly authorized on his behalf, and no sufficient excuse for the defendant's absence shall be shown, the registrar may, by leave of the Judge, upon due proof of the service of the summons and of the debt being due and owing, enter up judgment for the plaintiff, and have the same power to make an order for payment by instalments, or to enter up judgment of nonsuit, or to strike out or adjourn the cause, as the Judge of the County Court has; and such judgment shall be as valid as if both parties had attended the Court; but the judgment, and any execution thereon, may be set aside, and a new trial granted, upon such terms, if any, as the Judge may think fit to require.

See the observations in the introductory chapter, *ante*, p. 10, and Rule 2 of the New County Court Rules, *post*.

Where defendant appears and admits the claim.

17. Where a defendant appearing at the hearing either in person or by some person duly authorized to appear for him admits the claim, the registrar may, by leave of the Judge, settle the terms and conditions upon which it is to be paid, and enter up judgment accordingly as a judgment of the Court.

See Rule 2 of the New County Court Rules, *post*.

Approval of commissioners of the treasury substituted for approval of a secretary of state in sections 48 and 50 of 9 & 10 Vict. c. 95.

18. Wherever in sections forty-eight and fifty of an Act passed in the session of Parliament holden in the ninth and tenth years of the reign of her present Majesty, chapter ninety-five, the words "one of her Majesty's principal secretaries of state" occur, the words "the commissioners of her Majesty's treasury" shall be read in lieu thereof; and all the powers therein given to one of her Majesty's principal secretaries of state shall hereafter be in the commissioners of her Majesty's treasury, and shall be exercised by them; and all papers and documents relating to the County Courts in the custody of any such secretary of state shall be transferred into the custody of the said commissioners.

19. Wherever in section fifty-six of an Act passed in the session of parliament holden in the ninth and tenth years of the reign of her present Majesty, chapter ninety-five, the words "one of her Majesty's principal secretaries of state" occur, the words "the Lord Chancellor" shall be read in lieu thereof, and the power to be therein exercised by one of her Majesty's principal secretaries of state shall hereafter be in the Lord Chancellor, and shall be exercised by him.

Lord Chancellor to exercise power given to a secretary of state by section 56 of 9 & 10 Vict. c. 95.

20. Any Judge of County Courts shall be capable of acting for any other Judge of County Courts in or without the districts presided over by such Judge, and the deputy of a Judge of County Courts or registrar, duly appointed, shall have all the powers and privileges and perform all the duties of the Judge or registrar for whom he shall have been so appointed which have been given or shall be given to such Judge or registrar by any Act passed or to be passed, anything to the contrary notwithstanding; and where, in the absence of a Judge, a deputy of such Judge shall, from illness or otherwise, be incapable of performing his duties as such deputy, it shall be lawful for the Lord Chancellor to appoint another person, duly qualified, to be the deputy of such Judge.

Judges to be auxiliary to one another, and deputy of Judge or registrar to have all the powers of his principal.

See the New Rules, No. 85, *post*.

21. Every registrar who may be invested with the powers and authorities of a high bailiff under the provisions of "The County Courts Act, 1866," shall also be invested with the powers and authorities possessed by the high bailiff to the performance of whose duties he may succeed.

Registrars who may act as high bailiffs under 29 & 30 Vict. c. 14, to have the powers of the officer whom they succeed.

22. Every bailiff duly appointed by a high bailiff or a registrar may serve or execute any process which by any Act passed or to be passed is directed to be served or executed by a high bailiff, unless otherwise specially provided against herein.

Bailiffs to serve any process directed to be served by high bailiff.

23. Upon the death, resignation, or removal of any person being joint registrar with another of a County Court, no other person shall be appointed to such office of registrar, jointly or otherwise, until both the persons holding the joint office shall have died, been removed, or resigned, unless the Lord Chancellor shall otherwise order.

On death of a joint registrar survivor to be sole registrar.

24. Any moneys, annuities, stocks, or securities vested in any persons as trustees, executors, adminis-

Trustees may pay trust moneys

or transfer stock and securities into the Court.

trators, or otherwise, upon trusts within the meaning of an Act passed in the session of parliament holden in the tenth and eleventh years of the reign of her present Majesty, chapter ninety-six, "for better securing trust funds, and for the relief of trustees," where the same does not exceed in amount or value the sum of five hundred pounds, upon the filing by such trustees or other persons, or the major part of them, to or with the registrar of the County Court within the district of which such persons or any of them shall reside, an affidavit shortly describing the instrument creating the trust according to the best of their knowledge, may in the case of money be paid into a Post Office Savings Bank established in the town in which the County Court is held in the name of the registrar of such Court, in trust to attend the orders of the Court, and upon such persons filing with the registrar the receipt or other document given to them by the officer of the said bank the registrar shall record the same, and give to them an acknowledgment in such form as may be directed by any rule of practice, which acknowledgment shall be a sufficient discharge to such persons for the money so paid, and in the case of stocks or securities may be transferred or deposited into or in the names of the treasurer and registrars of such Court, in trust to attend the orders of the court, and the certificate of the proper officer of the transfer or deposit of such stocks or securities shall be a sufficient discharge to such persons for the stocks or securities so transferred or deposited; provided that where there is not a treasurer a person shall be nominated by rule of practice to whom the transfer or deposit in conjunction with the registrar may be made.

See the provisions of the 10 & 11 Vict. c. 96, noticed in 'Davis's County Courts Equitable Jurisdiction Act,' p. 24, and the new Orders and Rules in Equity, Order XI., Rule 6, *et seq.*, and Order XX., Rule 9, *post*.

Extension of Powers given by 12 & 13 Vict. c. 74, to Court of Chancery to County Courts.

25. For the purposes of the last section all the powers and authorities given to the Court of Chancery by the Act passed in the session of parliament holden in the twelfth and thirteen years of the reign of her present Majesty, chapter seventy-four, "for the further relief of trustees," shall be possessed and exercised by the County Courts, and any order made by virtue of such powers and authorities shall fully

protect and indemnify all persons acting under or in pursuance of such order.

See Davis's 'County Court Equitable Jurisdiction Act,' p. 24.

Monies paid into a County Court in equitable proceedings may be invested in a Post Office Savings-Bank.

26. Any money paid into a County Court in equitable proceedings shall, unless otherwise ordered by the Court, be invested by the registrar of the Court, in his name as registrar, within forty-eight hours of its payment into Court, in a post-office savings-bank established in the town in which the Court is held, without restriction as to amonnt, and without the declaration required of a depositor in a savings-bank; and no part of any money invested in a post-office savings bank under this Act shall be paid out to any registrar except upon an authority addressed to the postmaster-general by the commissioners of her Majesty's Treasury.

See New Orders and Rules in Equity, order xvii., rule 2.

Proceedings in equity may be commenced by summons.

27. Any proceeding taken in the County Courts under "The County Courts Act, 1865," conferring an equitable jurisdiction on such Courts, may, if so directed by rules and orders to be made under such Act, be commenced by summons.

The County Courts Equitable Jurisdiction Act does not prescribe the mode of commencing proceedings in the County Courts. The orders framed under that Act directed the proceedings under the 5th, 6th, and 8th clauses of the 1st section of the Act (that is to say, proceedings under the Trustees Relief Acts, or under the Trustee Acts, proceedings relating to the maintenance or advancement of infants, and proceedings for orders in the nature of injunctions) to be by petition (see Davis, 'Equitable Jurisdiction Act,' pp. 58, 59); but, in other cases, the procedure was by plaint and summons. The new equity orders have not made any alteration in this respect.

No action or suit to be commenced in any Hundred or other inferior Court.

Power to certain persons to make claim to compensation.

28. From and after the passing of this Act no action or suit which can now be brought in any County Court shall henceforth be commenced or be maintainable in any Hundred or other inferior Court not being a Court of Record; and every person who is legally entitled to any franchise or office in or in respect of any of the said Courts, the value of which shall be diminished or taken away by the operation of this Act, shall be entitled to make a claim for compensation to the Commissioners of her Majesty's Treasury within twelve months after the passing of this Act; and the said Commissioners, in such manner as they shall think fit, may inquire what was the

nature of the franchise or office, and what was the tenure thereof, and what were the lawful fees and emoluments in respect of which such compensation should be allowed; and the said Commissioners in each case shall award such compensation as they shall think just, upon consideration of the special circumstances of each case: provided that if any person so compensated accepts any public employment, he shall, during the continuance of such employment, receive only so much (if any) of compensation as, with the remuneration for that employment, will equal such compensation; and the several compensations hereinbefore granted shall be paid out of monies to be voted by Parliament, and the Commissioners of her Majesty's Treasury of the said United Kingdom are hereby authorized to pay the same accordingly.

Since the first establishment of the County Courts, in 1846, the tendency of legislation has been to merge isolated local courts, exercising a civil jurisdiction, in the County Courts. In 1849, the Marshalsea and Palace and Peveril Courts were abolished (12 & 13 Vict. c. 101). In 1852, the Hundred Courts of Offlow and Hemlingford, in the county of Chester, were abolished (15 & 16 Vict. c. 54); and the same statute which abolished the last-mentioned Courts empowered the Privy Council, on the petition of the council of any city or borough, or of a majority of the rate-payers, to exclude the jurisdiction of any local Court in causes of which the County Court had jurisdiction; and in 1856, the Hundred or Wapentake Court of Wirral, in the county of Chester, was abolished (19 & 20 Vict. c. 108, s. 77).

Where action unnecessarily brought in an inferior Court, only County Court costs to be allowed.

29. Where any action or suit shall be brought in any other Court than the superior Courts of law which could have been brought in a County Court, and the verdict recovered is for a less sum than ten pounds, the plaintiff shall not recover from the defendant a greater amount of costs than he would have been allowed if the action or suit had been brought in such County Court, unless the judge shall certify that the action or suit was a fit one to be brought in such other Court.

The Courts of the Counties Palatine are, it seems, superior Courts of law, within this section, and they are recognized as superior Courts in the County Courts Act, 1856 (19 & 20 Vict. c. 108, s. 86), treated as one Act with the present Act.

Remuneration of registrars and high bailiffs in matters under this Act.

30. The registrars and high bailiffs of the County Courts shall be remunerated for the duties to be performed by them under the jurisdiction given to the Courts by this Act, by receiving for their own use such fees as may be from time to time authorized to

be taken by any orders to be made by the Commissioners of the Treasury, with the consent of the Lord Chancellor; and the Commissioners of the Treasury are hereby authorized and empowered, with such consent as aforesaid, from time to time to make such orders: provided that it shall be lawful for the said Commissioners, with the like consent as aforesaid, to order that the registrars and high bailiffs shall, in lieu of receiving such fees, be paid such fixed or fluctuating allowances as may in each case be thought just; and from and after a day to be named in the order, the said fees shall be accounted for and paid over by such officers in such manner as may be therein directed.

See the Table of Fees, *post*.

High bailiff may interplead where claims as to goods taken in execution are made.

31. If any claim shall be made to or in respect of any goods or chattels taken in execution under the process of a County Court, or in respect of the proceeds or value thereof, by any person, it shall be lawful for the registrar of the Court, upon application of the high bailiff, as well before as after any action brought against him, to issue a summons, calling before the said Court as well the party issuing such process as the party making such claim; and the Judge of the Court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit, and shall also adjudicate between such parties, or either of them, and the high bailiff, with respect to any damage or claim of or to damages arising or capable of arising out of the execution of such process by the high bailiff, and make such order in respect thereof, and of the costs of the proceedings, as to him shall seem fit; and such orders shall be enforced in like manner as any order in any suit brought in such Court, and shall be final and conclusive as between the parties, and as between them, or either of them, and the high bailiff, unless the decision of the Court shall be in either case appealed from; and upon the issue of the summons any action which shall have been brought in any Court in respect of such claim, or of any damage arising out of the execution of such process, shall be stayed.

This section is in substitution of the 9 & 10 Vict. c. 95, s. 118, repealed by the new Act (see the practice under that Act, the 'Manual of Practice and Evidence in the County Courts,' 3rd edit. pp. 159–162, and the Evidence, pp. 568–577).

The 19 & 20 Vict. c. 108, s. 72, enacts that "Where any claim shall be made under s. 118 of the Act of the 9th and 10th years of the reign of her present Majesty, chapter 95, to or in respect of any goods taken in execution under the process of a County Court, the claimant may deposit with the bailiff either the amount of the value of the goods claimed, such value to be fixed by appraisement in case of dispute, to be by such bailiff paid into Court, to abide the decision of the Judge upon such claim, or the sum which the bailiff shall be allowed to charge as costs for keeping possession of such goods until such decision can be obtained; and in default of the claimant so doing, the bailiff shall sell such goods as if no such claim had been made, and shall pay into Court the proceeds of such sale, to abide the decision of the Judge."

Although this section is not repealed, it is doubtful how far it is in force, as it is limited to claims made under a particular section, which is repealed.

The new rules relating to *Interpleader* (rules 174 to 180), although not making any provision for the sale, seem to contemplate a sale under the execution, and not a stay of proceedings.

See the cases decided on the former corresponding rules, 'Manual of Practice and Evidence in the County Courts,' 3rd edit. pp. 161, 162.

Cases of interpleader may, at the instance of either party, be tried by a jury. See rule 106.

City of London Court.

32. The section numbered twenty-six in "The County Courts Act, 1856," shall extend and apply to the City of London Court.

See this section set out in the observations appended to s. 7, *ante*, p. 32.

Enactments in Schedule (C.) repealed.

33. The several enactments specified in Schedule (C.) to this Act are hereby repealed.

This Act and other County Courts Acts to be construed together.

34. This Act, and the several Acts specified in Schedule (D.) to this Act, shall, except such provisions of the same Acts respectively as are hereby repealed, be construed together as one Act, and may be respectively cited for all purposes by the short titles respectively given to them in such schedule, and this Act may be cited for all purposes as "The County Courts Act, 1867."

Meaning of the words "County Court" in this and future Acts, and shall include the City of London Court.

35. The words "County Court," when used in this Act or in any future Act, shall mean a Court holden by virtue of the Act passed in the session of Parliament holden in the ninth and tenth years of the reign of her present Majesty, chapter ninety-five, "for the more easy recovery of small debts and demands in England," and shall mean and include the Courts held by virtue of "The London (City) Small Debts Extension Act, 1852," unless otherwise provided, and such Courts shall be holden by the name of "The

City of London Court," and shall be a Court of Record, and its decisions shall be subject to appeal in the same way and on the same conditions as the decisions of a County Court are subject for the time being. The rules and orders in force for the time being for regulating the practice of and costs in the County Courts, and forms of proceedings therein, shall be in force in "The City of London Court," to the exclusion of any rules and orders now in force in that Court; and the same fees shall be taken for proceedings in which jurisdiction is hereby given to the Court as upon similar proceedings in the County Courts, and such fees shall be applied in the same manner as the fees taken under the provisions of the said Act of 1852: Provided that nothing in this Act, or in any of the Acts specified in Schedule (D.) to this Act, shall take away, lessen, or diminish any of the powers, rights, or privileges of the Judge of the said Court, or the authority of the Mayor, Aldermen, and Commons of the City of London in Common Council assembled in relation to such Court, or to the Judge or officers thereof, or to the fees taken therein, as such powers or authority existed previously to the passing of this Act.

For a summary of the previous general jurisdiction of the Court heretofore known as the Sheriff's Court of the City of London, under the Act 15 & 16 Vict. c. 77 (local and personal), see 'The Manual of Practice and Evidence in the County Courts,' 3rd edit., Part I., chap. 15, pp. 188–191.

Sections 118 to 122, both inclusive, are repealed by the new Act (see Schedule (C.), *post*); and as the words "County Court" in the new Act include "the City of London Court," other provisions of the local and personal Act are superseded. Before the new Act, the London Court was not a County Court, and no appeal lay from its equitable jurisdiction. (See Davis's 'County Courts Equitable Jurisdiction Act,' p. 30; and *Harper* v. *Pole*, 36 Law J.Rep. (N.S.), Ch. 375; *Gardiner* v. *The Cuchar Company, Limited*, *id.* 432.)

It would extend this work too much to enter into further details. See s. 3 of the new Act, *ante*, p. 29, 30, assimilating the jurisdiction of "the City of London Court" to a metropolitan County Court.

Commencement of Act.

36. This Act shall come into operation on the first day of January next after the passing hereof.

This section has the effect of postponing the operation of former sections, in which the expression "from and after the passing of this Act" is employed. (See ss. 5, 9, and 28, and note (*a*), *ante*, p. 8.

SCHEDULES.

SCHEDULE (A.)

I, *A. B.*, of, *etc.* [*or* agent for *C. D.*], make oath and say, that *E. F.* is indebted to me [*or* to the said *C. D.*] in the sum of for

And I further say, that the were sold and delivered to the said *E. F.* to be dealt with in the way of his trade of a

A. B.

Sworn at, *etc.*

SCHEDULE (B.).

Summons to obtain Judgment on Default on Personal Service.

No. [*of Plaint*].

In the [*title of Court issuing summons*].

[*Seal.*] Between *A. B.*, Plaintiff,
and
C. D., Defendant.

[*Name, Description, and Address of Defendant.*

TAKE NOTICE, That, unless at least six clear days before the [*day of appearance to summons*] you return to the Registrar of this Court at [*place of office*] the Notice given below, dated and signed by yourself, or your attorney or your agent, you will not afterwards be allowed to make any defence to the claim which [*name, description, and address of plaintiff*] makes on you, as per margin, the particulars of which are hereunto annexed; but the plaintiff may, without giving any proof in support of such claim, proceed to judgment and execution. If you return such notice to the registrar within the time specified, you must appear at a

	£	s.	d.
Claim	...	...	...
Fee for plaint . .	...	...	...
Attorney's costs (where payable) .	...	...	...
Total amount of debts and costs	...	...	...

County Court to be holden at
on the day of 186 ,
at the hour of in the noon, to
answer the above claim, which will be heard on that day.

Dated this day of 186 .

_____ Registrar of the Court.

See below.

Notice of Intention to Defend or to Object to the Jurisdiction of the Court.

No. [*of Plaint*].

In the [*Title of Court*].

A. B. v. *C. D.*

I intend to defend this cause [*or* to object to the jurisdiction of the Court] on the ground or grounds [*here state the ground or grounds*].

Dated this day of 186 .

_____ * defendant.

[*To be endorsed on the summons.*]

If you pay the debt and costs, as per margin on the other side, into the registrar's office, before the day of hearing, and without returning the Notice of Intention to defend, you will avoid further costs.

If you do not return the Notice of Intention to defend, but allow judgment against you by default, you will *save half the hearing fee*, and the order upon such judgment will be to pay the debt and costs forthwith [*or* by instalments, *to be specified as in plaintiff's written consent*].

If you admit a part only of the claim, you must return the Notice of Intention to defend within the specified time; and you may, by paying into the registrar's office the amount so admitted, together with costs proportionate to the amount you pay in, six clear days before the day of hearing, avoid further

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* Here must be signed the name of defendant, or of his attorney or agent, and in either of the last two cases the words "attorney for," or "agent for," must be added.
(See *post*, No. 99 of the New Rules.)

costs, unless the plaintiff at the hearing shall prove a claim against you exceeding the sum so paid.

If you intend to rely on a set-off, infancy, coverture, a statute of limitations, or a discharge under a Bankrupt or Insolvent Act, as a defence, you must, in addition to the Notice of Intention to defend, give to the registrar notice of such special defence six clear days before the day of hearing; and such last-mentioned notice must contain the particulars required by the rules of the Court; and you must deliver to the registrar as many copies of such notice as there are plaintiffs, and an additional copy for the use of the Court. If your defence be a set-off, you must, with the notice thereof, also deliver to the registrar a statement of the particulars thereof. If your defence be a tender, you must pay into Court, before or at the hearing, the amount tendered.

If you give such notice of intention to defend within the time specified, you may have the case tried by a jury, on giving notice in writing at the registrar's office, three clear days before the hearing, and on payment of five shillings for the use of such jury.

Summonses for witnesses and the production of documents may be obtained at the office of the registrar of this Court.

Hours of attendance at the office of the registrar of this Court at [*place of office*] from ten till four.

This summons must be served *personally* on the defendant twelve clear days before the day appointed for the hearing.

SCHEDULE (C.).

Reference to Act.	Title of Act.	Extent of Repeal.
9 & 10 Vict. c. 95.	An Act for the more easy recovery of Small Debts and Demands in England.	The whole of the sections numbered respectively sixty, one hundred and eighteen, one hundred and twenty-eight, and one hundred and twenty-nine.
13 & 14 Vict. c. 61.	An Act to extend the Act for the more easy Recovery of Small Debts and Demands in England, and to amend the same.	The whole of the sections numbered respectively eleven and twelve.
15 & 16 Vict. c. 54.	An Act further to facilitate and arrange Proceedings in the County Courts.	The whole of section four.
15 & 16 Vict. c. 77.	An Act for the more easy Recovery of Small Debts and Demands in the City of London and Liberties thereof.	The whole of the sections numbered respectively one hundred and eighteen, one hundred and nineteen, one hundred and twenty, one hundred and twenty-one, and one hundred and twenty-two.
19 & 20 Vict. c. 108.	An Act to amend the Acts relating to County Courts.	The whole of the sections numbered respectively fifteen and thirty.
23 & 24 Vict. c. 126.	An Act for the further Amendment of the Process, Practice, and Mode of Pleading in and Enlarging the Jurisdiction of the Superior Courts of Common Law at Westminster.	The whole of section thirty-four.
28 & 29 Vict. c. 99.	An Act to confer on the County Courts a limited Jurisdiction in Equity.	The fourth head of Suits and Matters mentioned in the first section.

SCHEDULE (D.).

Acts.	Short Title.
9 & 10 Vict. c. 95. An Act for the more Easy Recovery of Small Debts and Demands in England.	"The County Courts Act, 1846."
12 & 13 Vict. c. 101. An Act to Amend the Act for the more Easy Recovery of Small Debts and Demands in England, and to abolish certain inferior Courts of Record.	"The County Courts Act, 1849."
13 & 14 Vict. c. 61. An Act to Extend the Act for the more Easy Recovery of Small Debts and Demands in England.	"The County Courts Act, 1850."
15 & 16 Vict. c. 54. An Act further to facilitate and arrange Proceedings in the County Courts.	"The County Courts Act, 1852."
19 & 20 Vict. c. 108. An Act to Amend the Acts relating to the County Courts.	"The County Courts Act, 1856."
21 & 22 Vict. c. 74. An Act for the Re-arrangement of the Districts of the County Courts among the Judges thereof.	"The County Courts Act, 1858."
22 & 23 Vict. c. 57. An Act limiting the Power of Imprisonment for Small Debts exercised by the County Court Judges.	"The County Courts Act, 1859."
28 & 29 Vict. c. 99. An Act to confer on the County Courts a limited Jurisdiction in Equity.	"The County Courts Act, 1865."
29 & 30 Vict. c. 14. An Act for the Abolition of the Offices of Treasurer and of High Bailiffs of County Courts as vacancies shall occur, and to provide for the Payment of future Registrars of County Courts.	"The County Courts Act, 1866."

CHAPTER ON COSTS.

In instituting legal proceedings to enforce a claim, no question occupies so prominent a place in the mind of the suitor as that of costs, and the selection of the Court must now depend in so many cases on the right to recover costs on the one hand, or liability to them on the other, as to render a clear view of that right or liability desirable for the legal adviser, especially as the law has been considerably complicated by recent legislation. No less important is it for a defendant to know the effect, upon his right or liability to costs, of removing a cause to or from a County Court.

A concise statement of the general right to costs in actions begun and ended in the superior Courts, and then a statement of the right to costs in actions begun and ended in the County Courts, followed by the effect upon costs of the removal of actions from the courts in which they were begun, will, it is hoped, supply the information generally required.

First.—Of the general Right to Costs in Actions begun and ended in the Superior Courts.

The Plaintiff's general Right to Costs in general in Actions in the superior Courts.]—The plaintiff's general right to costs under the statute of Gloucester (6 Edward I. c. 1) has been limited from time to time for the purpose of restraining frivolous and vexatious actions.

Without entering into the history of legislation on this subject, the general law as to costs of actions in the superior Courts as it existed before the Common Law Procedure Act, 1860, and without reference to

County Court Acts, may be thus stated. In actions on the case for slanderous words (other than words actionable only by reason of special damage), if the plaintiff recovered less than forty shillings, he could have no more costs than damages, and the Judge had no power to certify to give him costs, (21 Jac. I. c. 16). In other actions on the case, and in actions of trespass, if the plaintiff recovered less than forty shillings, he could have no costs whatever unless the Judge certified that the action was brought to try a right besides the mere right to recover damages, or that the trespass was wilful and malicious, or unless it were suggested on the roll that the action was for a trespass to land, etc., after notice. (3 & 4 Vict. c. 24). In other personal actions, if the plaintiff recovered less than forty shillings he was, so far as regards the above statutes, entitled to his full costs, unless the Judge who tried the cause certified to deprive him of them; but this the Judge might do if he thought fit, under the statute 43 Eliz. c. 6, s. 2. (Gray on Costs, pp. 108, 109.)

Independently of these statutes depriving parties of costs where the damages recovered were under forty shillings, the superior Courts at Westminster have always interfered on the application of the defendant, in actions for debts under forty shillings which might have been claimed in the old County Court of the Sheriff, and stayed the proceedings on payment of the debt, either absolutely, or, if the debt were admitted, without costs. This rule did not extend to actions of trover or tort. (See Gray on Costs, pp. 164, 167.)

By the Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), "when the plaintiff in any action for an alleged wrong, in any of the superior Courts, recovers by the verdict of a jury less than £5, he shall not be entitled to recover or obtain from the defendant any costs whatever in respect of such verdict, whether given upon any issue or issues tried, or judgment

passed by default, in case the Judge or presiding Officer before whom such verdict is obtained shall immediately afterwards certify on the back of the record, or on the writ of trial, or writ of inquiry, that the action was not really brought to try a right besides a mere right to recover damages, and that the trespass or grievance in respect of which the action was brought was not wilful and malicious, and that the action was not fit to be brought."

Capping these provisions, which are still in force, by s. 5 of the new Act (*ante*, p. 30), it will be seen that to entitle a plaintiff in an action in the superior Courts to costs as a matter of course, he must recover more than £20 if the action be founded on contract, and more than £10 if founded on tort. If he recovers in an action of contract any sum not exceeding £20, he is not entitled to costs unless the Judge certifies as mentioned in s. 5 of the new Act; so if he recovers in an action of tort any sum not exceeding £10, he is not entitled to costs unless the Judge certifies under s. 5 of the new act. If he recovers less than forty shillings in an action of slander for words (other than words actionable only by reason of special damage), no certificate can be given. In other actions of tort, if the damages are less than forty shillings, the plaintiff would require a certificate not only under s. 5 of the new Act, but also under the 3 & 4 Vict. c. 24; but in most cases if a Judge in such an action thought fit to give a certificate under s. 5 of the new Act, he would also give it under the 3 & 4 Vict. c. 24; still in some exceptional cases the Court may feel compelled to certify or allow costs under £5 where the Judge has refused to certify under 3 & 4 Vict. With respect to the 23 & 24 Vict. c. 126, it is practically merged in s. 5 of the new Act; for if a Judge thought fit to certify to give costs under s. 5 where the plaintiff recovered less than £5 in tort, he would not certify to deprive under 23 & 24 Vict. c. 126.

The question (of a temporary character) as to the

position of plaintiffs in actions commenced before the passing of the Act, but tried after the 1st January, 1868, has been already adverted to. (See Introductory Chapter, p. 8.)

The Defendant's General Right to Costs in Actions in the superior Courts.]—It is sufficient to state here that a successful defendant on verdict or nonsuit in actions in the superior Courts has a right to his costs under the statutes (23 Hen. VIII. c. 15, and 4 Jac. I. c. 3. (See Gray on Costs.)

Quantum of Costs in Actions in the superior Courts.]—The costs are taxed by the Masters of the Courts under the control of the Judges. The discretion of the Masters as to the expense of evidence and witnesses generally is almost unlimited. So also with regard to the fees to counsel, the Masters exercise a discretion, regulated, to a certain degree, by the nature and magnitude of the cause. Heretofore, in actions of contract, the discretion of the Masters has been in a great degree governed by directions issued to them, having reference to actions above and under £20. (See observations, *ante*, p. 36.)

Secondly.—The Right to Costs in Actions begun and ended in the County Courts.

In actions in the County Courts, the Judge has control over the costs, and he may withhold all costs from a successful plaintiff or defendant. In the absence, however, of any special direction, the costs abide the event of the action, and execution issues for the recovery of costs in the same manner as for a debt, see 9 & 10 Vict. c. 95, s. 88; and although the statute which directed that costs should (in the absence of a special direction) abide the event, related only to the Court fees payable by a plaintiff, there is a note at the end of the "scale of costs and charges to be paid to counsel and attorneys in actions, as well between party and party as between at-

torney and client," that "the costs in every cause shall upon the above scale abide the event, unless the Judge shall make some special order with reference to such costs, or any part thereof." (See *post*, p. 59, and *post*, Scale of Costs.) This scale is confined, however, to actions of debt or contract exceeding £20, and of tort where the damages recovered exceed £20, and to actions of ejectment and where title comes in question under ss. 11 & 12 of the new Act. (See *ante*, pp. 37, 38, and *infra*.)

In other actions, if any costs are sought to be recovered beyond the Court fees, application must be made to the Judge.

In all cases of whatever amount or description, the Judge must direct the number of witnesses to be allowed. (See Rule 130, *post*.)

It is to be observed that schedule (C.) of the County Court Act, 1856 (19 & 20 Vict. c. 108), containing the fees of Court payable on proceedings in the County Courts, has the following clause:—"Where the plaintiff recovers less than the amount of his claim, so as to reduce the scale of costs, he shall pay the difference, unless the reduction shall be caused by a set-off."

Although the fees mentioned in this schedule have been altered by an order of the 30th December, 1867 (see *post*), it seems that the alteration does not affect the above direction.

Quantum of Costs in Actions in the County Courts.]—The amount of costs is regulated by various provisions of the County Courts Acts, and by the rules of those Courts.

Costs where the Debt or Damage claimed does not exceed Twenty Pounds.]—The original County Court Act, 9 & 10 Vict. c. 95, s. 91 (which, although partially repealed, is still in force in respect of this matter), enacts that the expense of employing a barrister or an attorney, either by plaintiff or defendant, shall not be allowed on taxation of costs in the case of a

plaintiff where less than five pounds is *recovered*, or in the case of a defendant where less than five pounds is *claimed*.

By force of the same section, where the amount recovered amounts to £5, or where a plaintiff having claimed more than £5 fails to recover anything, costs may be allowed, by order of the Judge, not exceeding 15*s*. to the attorney, and not exceeding one guinea and clerk (£1. 3*s*. 6*d*.) to a barrister.

As under the Act limiting the costs as above mentioned, no sum above £20 could be claimed in the County Court, the above provisions have been always treated as only applicable to cases within the jurisdiction of that Act.

Costs where the Debt or Damage claimed exceeds Twenty Pounds.]—"With respect to proceedings in the County Courts in actions where the debt or damage claimed exceeds twenty pounds" the five County Court Judges empowered to frame rules and orders for regulating the *practice* of the Courts are also empowered (subject to the Chancellor's approval) to frame, and from time to time to amend, a *scale of costs* and charges to be paid to counsel and attorneys; and with respect to such proceedings, all costs and charges between party and party are ordered to be taxed by the Registrar of the Court, subject to review by the Judge; "and no costs or charges shall be allowed on such taxation which are not sanctioned by the scale then in force." (19 & 20 Vict. c. 108, ss. 33, 34.)

By the new Act, the same Judges are empowered "to frame a *scale of costs and charges* to be paid to counsel and attorneys with respect to all proceedings which are herein authorized to be taken, or with respect to proceedings in plaints for the recovery of tenements, or in actions of replevin." (See s. 15, *ante*, p. 39.)

Under these powers, combined, a new "scale of costs and charges to be paid to counsel and attorneys in actions, as well between party and party as be-

tween attorney and client," has been framed and allowed (see *post*). It will be seen that this scale is in the first place divided into three heads or columns —costs and charges "in actions of debt or contract exceeding £20;" costs and charges "in actions of *tort* where damages recovered exceed £20;" and costs and charges "in actions under ss. 11 & 12 of the County Courts Act, 1867." (*a*)

A note at the end of the scale, as already pointed out, directs that the "costs in every cause shall, upon the above scale, abide the event, unless the Judge shall make some special order with reference to such costs, or any part thereof."

It will be observed that there is a distinction in the heading of the columns. The first is "in actions of debt or contract exceeding £20;" the second is "in actions of *tort*, where damages *recovered* exceed £20." As the power under which this part of the scale is framed, applies to where the debt or damage *claimed* exceeds £20, the first column may be read as applying to actions of debt or contract where the sum *claimed* exceeds £20. The result of that would be to give plaintiffs in those actions who recovered £5 or upwards (for in actions where less was recovered the 91st section of the Act of 1846 would apply, see *ante*, pp. 57, 58), a right, in the absence of a special order to costs according to the scale.

This construction would, however, lead to the anomaly that while in actions of debt or contract a plaintiff claiming more than £20 and recovering only £5 would be entitled to costs on the scale, a plaintiff in

(*a*) Besides these three heads there is an additional scale applicable to "actions under section 2 of the County Courts Act, 1867, where sum claimed exceeds forty shillings, and does not exceed £20;" but this scale is confined to four special items, and therefore it is unnecessary to embarrass the text with it. It may be observed, however, that this scale of costs for actions under section 2 of the Act is wholly superfluous, for the costs of proceedings under section 2 are provided for in the first column of the scale. But it is not merely superfluous, but embarrassing, for a different sum is given in the two scales in respect of the same thing.

actions of *tort* must *recover* a sum exceeding £20 to be entitled to costs on the scale.

There is no difference whatever in the two columns as regards the remuneration allowed (except in a few matters inapplicable to *tort*) to render this result reasonable. It seems impossible, therefore, to suppose that the first column was intended to apply to any other than actions of debt or contract proved (*i. e.* recovered) exceeding £20.

But although this construction would render the two columns consistent one with the other, the effect would be to render both columns inapplicable to cases where a plaintiff wholly fails and where, therefore, a defendant ought to receive his costs. In any view in actions of tort, a successful defendant is not entitled according to the scale, to costs, although the scale contains items applicable to a defendant's costs, and although there is a general direction that the costs are to abide the event.

The fact is a mistake has been made in the heading of the columns. The first and second columns should have used the word *claimed*.

The point is of so much importance as to require a close investigation.

Adverting again to the original constitution of the County Courts, it is clear that under the County Courts Act, 1846 (9 & 10 Vict. c. 95) no other costs of attorney or counsel were recoverable than as mentioned in the 91st section of that Act. Upon the general extension of the County Court jurisdiction in 1850 from £20 to £50, a small increase was made in the allowance to attorneys and counsel (the County Courts Act, 1850, 13 & 14 Vict. c. 61, s. 6), but this provision was repealed by the County Courts Act, 1856 (19 & 20 Vict. c. 108), and power given as it now exists, in the terms already mentioned, to the County Court Judges to frame a scale of costs and charges in actions where the debt or damage *claimed* exceeds £20.

In accordance with and in exercise of this power a scale of costs and charges was framed, which continued in force until the recent alteration (*a*). This scale was entitled "a scale of costs and charges to be paid to counsel and attorneys in the County Courts, as well between party and party as between attorney and client, under the provisions of the statute 19th & 20th Vict. c. 108th;" and the costs upon this scale were directed to abide the event unless the Judge made a special order with reference to such costs. This scale made no reference to or distinction as to the amount recovered, and it therefore clearly applied to all actions where the debt or damage claimed exceeded £20, except in the £5 cases controlled by the 91st section of the original Act.

Although, however, the Judge of the County Court who tried the cause could not extend either the amount of the costs in this scale, or their application, he retained the power conferred by the original Act to grant or refuse costs in part or altogether (See 9 & 10 Vict. c. 95, s. 88, referred to *ante*, pp. 56, 57); and by a rule of practice made simultaneously with the above-mentioned scale, it was ordered (County Court Rules, 1863, Rule 12) that "in all cases where a plaintiff claims more than £20 and recovers more than £5, but less than £20, the scale upon which the costs shall be taxed, shall be in the discretion of the Court;" the effect of this being to cut down or restrain, and not to extend the application of the scale framed by the Judges. Without a provision of this kind a plaintiff might claim in his summons more than £20, although really claiming less, in order to get costs. The only objection to the wording of this rule is the reference to the scale of costs, as if there were, in fact, more than one scale, for the costs allowed to attorneys and counsel under s. 91 of the 9 & 10 Vict. c. 95, is not there described as a scale.

(*a*) See the history and grounds of the previous changes in the 'Manual of Practice and Evidence,' 3rd edit. pp. 170–174.

This Rule (Rule 12 of the County Court Rules, 1863,) has been reintroduced in the new Rules with a slight verbal alteration. "In all cases where a plaintiff claims a sum exceeding £20, and recovers a sum not exceeding £20, but exceeding £5, the scale upon which the costs shall be taxed shall be in the discretion of the Court." (See Rule 129, *post*.) Like its predecessor this Rule is intended to cut down costs and to prevent plaintiffs claiming more than is really due. But what application has this Rule now?

The new scale of costs and charges, so far as it is framed under the 19 & 20 Vict. c. 108, s. 33, only applies, as has been seen, (at least in actions of *tort*,) where the sum recovered exceeds £20; and s. 34 of the same Act expressly provides that in actions where the debt or damage claimed exceeds £20 no costs or charges shall be allowed on taxation which are not sanctioned by the scale then in force.

The only application of the new Rule (129) beyond a possible application to actions of contract, appears to be to actions under ss. 11 and 12 of the new Act, forming the subject of the third column of the new scale, but those being actions where title is in question, Rule 129 will scarcely ever be applied; for the action being brought to try a right, or at least where a title is in question, the Judge would not be inclined to exercise the power to cut down the costs.

It is impossible to escape from the conclusion already pointed out, that a mistake has been made which calls for immediate correction.

Dealing with the scale as it now stands, a plaintiff in an ordinary action of tort, say of assault, or for negligence, who recovers £20 (or a sum above £10) damages, is entitled to his full costs if he recovers those damages in a superior Court, but he is not entitled even to County Court costs if he recovers £20 damages in a County Court; and, still more extraordinary, a defendant who succeeds in defeating a

plaintiff's claim altogether in such an action, cannot recover any costs in the County Court.

Treble Costs for Defendant under "The County Courts Act, 1850".]—"The County Courts Act, 1850," (13 & 14 Vict. c. 61, s. 18,) enacts that "if any party shall sue another in any County Court for any debt or other cause of action for which he hath already sued him, and obtained judgment, in any other Court, the proof of such former suit having been brought and judgment obtained may be given, and the party so suing shall not be entitled to recover in such second suit, and shall be adjudged to pay three times the costs of such second suit to the opposite party."

Costs in Actions of Ejectment and Actions in which the Title to any Corporeal or Incorporeal Hereditament is in question.]—As has been stated under the preceding head, a scale of costs has been framed under the authority given by s. 15 of the new Act, in respect of actions of ejectment under s. 11, and actions in which the title to any corporeal or incorporeal hereditament is in question under s. 12 of this Act. (See the scale, *post*, Appendix.) In ejectment the plaintiff or defendant, as the case may be, will be entitled to costs according to the scale in the third column. (See the new Rules in Ejectment, Rules No. 223-256, *post*, Appendix.) In actions of title, the plaintiff or defendant will be entitled to costs according to the scale, irrespective of the amount recovered, but subject to the 129th Rule, (see above) of rare application, however, for, in the first place, as already observed, a Judge in an action of title would not exercise the power to cut down the costs; and, in the second place, in an action brought to try a right, the damages claimed would rarely exceed £20, and it is only in such a case that Rule 129 applies.

Some difficulty, however, may occur in actions of title, for, in some of those cases, at least, the damages in actions in the superior Courts are merely nominal,

(the plaintiff often not being entitled to more), the Judge certifying for costs. In County Courts, if the damages are nominal there may be a difficulty in the plaintiff getting his costs, for, unless the particulars of action (see Rule 257) disclose a question of title, there is nothing to guide a registrar in taxing the costs, for, as there are no pleadings, there will be nothing to distinguish between an ordinary action of tort and an action of title, and, as has been seen, in an ordinary action of tort upwards of £20 must be recovered to entitle a plaintiff to costs according to the scale. As has been observed in the observations on s. 12 of the Act (*ante*, p. 38), a plaintiff may bring his action of trespass, whether to land or to the person, leaving a defendant to set up title. In order to obviate any difficulty as to costs, it will be desirable that where title is really in question the plaintiff should frame his plaint and particulars so as to disclose the question of title.

Thirdly.—Costs in Actions sent for Trial or removed from the Superior Courts to the County Courts.

Actions sent for Trial under the County Courts Act, 1856.]—Where an action is merely sent for *trial* under the County Courts Act, 1856 (19 & 20 Vict. c. 108, s. 26, *ante*, p. 32), as the action remains in the superior Court, the right to costs remains as if it were tried there, beyond this, that if the plaintiff does not recover more than £20, any application for costs under s. 5 of the new Act must be made to the superior Court or to a Judge at Chambers, for there is no "Judge" to "certify on the record" within the meaning of that section.

The *amount* of costs will be, of course, affected by the trial in the County Court, and in the absence of any direction of the Judge at Chambers when ordering the case to be tried in a County Court, the costs

of the trial will be taxed by the master, upon the County Court scale, whether the verdict be for the plaintiff or for the defendant (*Wheatcroft* v. *Foster*, 27 L. J. Rep. (N. S.) Q. B. 277; E. B. & E. 737).

The Judge who makes the order for trial may, however, order that the costs shall be allowed as if the case had remained in the superior Court; and it behoves a defendant to have some special terms inserted (as that his costs of trial, if he succeeds, shall be taxed according to the scale in the first column of the new County Court scale), and this is only reasonable, for, as has been seen, it is doubtful, in consequence of a mistake in the heading, whether it can be applied to a defendant. (See *ante*, p. 62.)

A plaintiff may also endeavour to have terms inserted in the order, that if he recovers more than £5, but less than £20, his costs should be taxed on the new County Court scale; but a plaintiff can scarcely maintain such an application for any special terms in the order; for if he recovers more than £20, he will be entitled to the costs of the trial on the liberal footing provided for by the new County Court scale, and if he recovers a less sum, he is not (under s. 5 of the new Act) entitled to any costs at all (unless the Court or a Judge of the superior Court after the trial allows them), because he ought to have commenced the action in the County Court. He cannot well say, as a ground for the insertion of special terms, that by sending the case for trial to the County Court he is deprived of the chance of the Judge certifying for costs on the record under s. 5, because any reasons that exist for bringing the action in the superior Court must exist at the time of the hearing of the application for the order, and these reasons would, except in rare cases, be a ground for resisting the order altogether.

Actions of Contract removed into the County Court under s. 7 of "The County Courts Act, 1867."]—The effect of s. 7 of the new Act, and of the new Rules

under it on costs, has been fully discussed elsewhere (see *ante*, p. 33). The only additional observation called for here, is, that in consequence of the doubtful application of the first column of the new County Court scale of costs to a successful defendant (see *ante*, p. 62), it may be desirable for a defendant who seeks to have his cause tried in the County Court, to wait until issue joined, and make the application under s. 26 of the County Court Act, 1856, when the Judge of the superior Court can make a special order as to the defendant's costs, which he cannot do under s. 7 of the new Act.

The new County Court scale of costs is clearly intended to apply to actions removed under ss. 7 and 10, for there is an item specially applicable to such cases (*i. e.* attending lodging Judge's order, etc.)

Actions of Tort removed into the County Court under s. 10 *of* "*The County Courts Act*, 1867."]—The effect of s. 10 of the new Act has been also treated of elsewhere (see *ante*, p. 36).

As an application can only be made under this section on the ground that the plaintiff has no visible means of paying costs, the fact that if the action be removed into the County Court there is no scale of costs for a successful defendant in an action of tort (see *ante*, p. 62), will scarcely deter a defendant from making the application; but on the other hand, it may be urged by a plaintiff against such removal, that in consequence of the heading of the County Court scale (see *ante*, p. 59) unless he recovers more than £20 in the County Court he cannot get his costs incurred there, while if the action remained in the superior Courts, and he recovered any sum above £10 in the superior Court, he would be entitled to his costs; and that this absurdity follows, that if the action be removed and he recovers £20, he will have his full costs of the superior Courts down to the removal, but no costs after.

Costs in Actions removed from the County Courts to the Superior Courts.

An action may be removed from the County Court by certiorari, however small the amount sued for may be, if a superior Court or a Judge thinks it a fit or desirable case to be tried in the superior Court, if the applicant gives security for costs.

So also in actions where the plaintiff claims more than £20 in contracts, or more than £5 in tort, the defendant has an absolute right to stay the proceedings in the County Court on giving security for the amount claimed and cost of suit in a superior Court.

See the statutes, and also the circumstances in which these powers may be exercised fully treated of, in the 3rd edition of the 'Practice and Evidence in the County Courts,' pp. 76–85. See also Rule 67, *post.*

DISCOVERY; ATTACHMENT OF DEBTS AND EQUITABLE DEFENCES UNDER "THE COMMON LAW PROCEDURE ACT, 1854."

ORDER IN COUNCIL.

At the Court at Windsor, the 18th day of November, 1867.

PRESENT:

The Queen's most Excellent Majesty in Council.

Whereas by "The Common Law Procedure Act, 1854," it is enacted that it shall be lawful for her Majesty, from time to time, by an Order in Council, to direct that all or any part of the provisions of the said Act shall apply to all or any Court or Courts of Record in England and Wales, and that within one month after such order shall have been made and published in the 'London Gazette' such provision shall extend and apply in manner directed by such order, and that any such order may be, in like manner, from time to time altered and annulled; and that in and by such order her Majesty may direct by whom any powers or duties incident to the provisions applied under the said Act shall and may be exercised with respect to matters in such Court or Courts, and may make any orders or regulations which may be deemed requisite for carrying into operation in such Court or Courts the provisions so applied:

And whereas it has seemed fit to her Majesty, by and with the advice of her Privy Council, that certain of the provisions of the said Act should be extended and applied to all the Courts of Record established under the provisions of "The County Courts Act, 1846," and also to the City of London Court of Record as constituted by "The County Courts Act, 1867:"

Now, therefore, her Majesty, by and with the advice aforesaid, is pleased to order, and it is hereby

ordered, that the provisions contained in sections fifty, fifty-one, fifty-two, fifty-three, fifty-four, sixty, sixty-one, sixty-two, sixty-three, sixty-four, sixty-five, sixty-six, sixty-seven, eighty-three, eighty-four, eighty-five, and eighty-six of "The Common Law Procedure Act, 1854," shall apply to the said Courts of Record.

And her Majesty is further pleased, by and with the advice aforesaid, to direct that the powers and duties incident to the above-mentioned provisions of "The Common Law Procedure Act, 1854," with respect to matters in the said Courts of Record, shall and may be exercised by the Judges of the said Courts respectively, or their respective deputies, and to order that the statutes, rules of practice, orders, and forms in force and used in the said Courts of Record shall be adopted with reference to proceedings had in such Courts under the above-mentioned provisions of "The Common Law Procedure Act, 1854," so far as the same are applicable, mutatis mutandis.

(Signed) ARTHUR HELPS.

COMMON LAW PROCEDURE ACT, 1854.

Sections referred to in the Order in Council.

DISCOVERY OF DOCUMENTS.

50. Upon the application of either party to any cause or other civil proceeding in any of the superior Courts, upon an affidavit by such party of his belief that any document, to the production of which he is entitled for the purpose of discovery or otherwise, is in the possession or power of the opposite party, it shall be lawful for the Court or Judge to order that the party against whom such application is made, or if such party is a body corporate that some officer to be named of such body corporate, shall answer on affidavit, stating what documents he or they has or have in his or their possession or power relating to the matters in dispute, or what he knows as to the custody they or any of them are in, and whether he or they objects or object (and if so, on what grounds,) to the production of such as are in his or their possession or power; and upon such affidavit being made

the Court or Judge may make such further order thereon as shall be just.

See the observations in the Introductory Chapter, *ante*, pp. 13, 14; and the New Rules, *post*, Common Law Rules, Nos. 76–79.

Apart from the above provision of "The Common Law Procedure Acts, 1854," Courts of law exercised a jurisdiction to enforce the production of documents to be either stamped or inspected, in which the party seeking the production had an interest (see *ante*, p. 13, 14). The New County Court Rule, No. 76 (*post*) is founded on this common law jurisdiction. The superior Courts had further powers conferred on them in this direction by section 6 of the 14 & 15 Vict. c. 89 (see *ante*, p. 14), but that section did not apply to County Courts. That power, however, may be treated (so far, at least, as relates to the County Courts) as merged in the above provision of "The Common Law Procedure Act, 1854," now applied to the County Courts.

Power to deliver written interrogatories to opposite party.

51. In all causes in any of the superior Courts, by order of the Court or a Judge, the plaintiff may, with the declaration, and the defendant may, with the plea, or either of them by leave of the Court or a Judge may, at any other time, deliver to the opposite party or his attorney (provided such party, if not a body corporate, would be liable to be called and examined as a witness upon such matter) interrogatories in writing upon any matter as to which discovery may be sought, and require such party, or in the case of a body corporate any of the officers of such body corporate (*a*), within ten days to answer the questions in writing by affidavit, to be sworn and filed in the ordinary way: and any party or officer omitting, without just cause, sufficiently to answer all questions as to which a discovery may be sought within the above time, or such extended time as the Court or a Judge shall allow, shall be deemed to have committed a contempt of the Court, and shall be liable to be proceeded against accordingly.

Affidavits by party proposing to interrogate, and his attorney.

52. The application for such order shall be made upon an affidavit of the party proposing to interrogate, and his attorney or agent, or, in the case of a body corporate, of their attorney or agent (*b*), stating that the deponents or deponent believe or believes that the party proposing to interrogate, whether plaintiff or defendant, will derive material benefit in

(*a*) Directors of a registered company are officers of a company within this section. *Madrid Bank* v. *Bayley*, 36 L. J. Q. B. 15.

(*b*) The liquidator of a company may apply. *Madrid Bank* v. *Bayley*, 36 L. J. Q. B. 15.

the cause from the discovery which he seeks, that there is a good cause of action or defence upon the merits, and, if the application be made on the part of the defendant, that the discovery is not sought for the purpose of delay; provided that where it shall happen from unavoidable circumstances that the plaintiff or defendant cannot join in such affidavit, the Court or Judge may, if they or he think fit, upon affidavit of such circumstances by which the party is prevented from so joining therein, allow and order that the interrogatories may be delivered without such affidavit.

Oral examination of parties, when to be allowed.

53. In case of omission, without just cause, to answer sufficiently such written interrogatories, it shall be lawful for the Court or a Judge, at their or his discretion, to direct an oral examination of the interrogated party, as to such points as they or he may direct, before a Judge or Master; and the Court or Judge may by such rule or order, or any subsequent rule or order, command the attendance of such party or parties before the person appointed to take such examination, for the purpose of being orally examined as aforesaid, or the production of any writings or other documents to be mentioned in such rule or order, and may impose therein such terms as to such examination, and the costs of the application, and of the proceedings thereon, and otherwise, as to such Court or Judge shall seem just.

Proceedings upon such rule or order.

54. Such rule or order shall have the same force and effect, and may be proceeded upon in like manner, as an order made under the said hereinbefore mentioned Act passed in the first year of the reign of his late Majesty King William the Fourth.

See the observations as to the object and general scope of these provisions, in the Introductory Chapter, *ante*, p. 13, 17. See also the new County Court Rules framed for the application of the above sections to the County Courts, *post*, Rules Nos. 80 to 84.

The general rules and circumstances under which these powers may be applied, will be stated concisely.

A party is entitled to discovery of all that is material to his own case, even though the matter be common to that of his adversary. Hence, if the interrogatories be such that the answers may reasonably be expected to disclose matter which will advance the case of the interrogating party, it is no objection that those answers may disclose the case of the party interrogated. (See *Hawkins* v. *Carr*, 35 L. J. Q. B. 81, as a recent illustration.)

But a party is not entitled to discovery of matters relating exclusively to the case of the other party, for the statute was not meant to apply so as to enable one party, by means of in-

terrogatories, to discover how the other intends to shape his own case, and to see whether there are any defects in it which he may avail himself of. (*Moor* v. *Roberts*, 2. C. B. Rep. N. S. 671; 26 Law J. Rep. (N. S.) C. P. 246; Lush's 'Practice,' 3rd ed. pp. 852, 853.

A plaintiff is entitled, nevertheless, to discovery from the defendant, not only of that which constitutes his own title, but also for the purpose of repelling the case, or what he anticipates will be the case, set up by the defendant, though not otherwise common to both.

As the object of interrogatories is to obtain information upon matters peculiarly within the knowledge of the other party, and which may assist him in establishing his case, interrogatories upon matters known to the interrogated party only through his agents, and equally within the knowledge of the agents of the other, have been disallowed. (*Bird* v. *Mulzey*, 11 C. B. Rep. N. S. 308.)

The interrogatories should be confined to such matters as are relevant to the case set up, and as it would seem to such as would be evidence in the action. (*Edwards* v. *Wakefield*, 6 E. & B. 462.)

Thus interrogatories for the purpose of contradicting a written instrument are disallowed. (*Moor* v. *Roberts*, 2. C. B. N. S. 671; 26 Law J. Rep. (N. S.) C. P. 246.) Nor can the contents of documents be inquired into (per Alderson, B., *Hersch-feld* v. *Clarke*, 11 Ex. Rep. 712), unless a primâ facie case be made out that they are lost. (*Wolverhampton Waterworks Co.* v. *Hawksford*, 5 C. B. N. S. 703; 28 Law J. Rep. C. P. 198.) See Lush's 'Practice,' 3rd edit. pp. 852, 857.

Interrogations should be concise and simple in form. *Hustlee* v. *Freeland*, 2 L. R. 396.

Where the answer may tend to criminate.]—In some cases, interrogatories will be allowed, although the answers may tend to criminate the interrogated party, or render him liable to forfeiture, for any objection on that ground should come from him by way of answer upon oath. It should appear, however, that the application is *bonâ fide*, and with a view to elicit facts to which the applicant is entitled, and not for the purpose of prejudice. See *Bickford* v. *D'Arcy*, 35 L. J. Ex. 202, and cases there cited.

If the interrogated party states upon oath that his answers might subject him to a forfeiture, he will not be required to answer further. (*Pye* v. *Butterfield*, 34 Law J. Rep. (N. S.) Q. B. 17.)

Under ordinary circumstances interrogatories cannot be put in ejectment, and not in any case, it seems, by the plaintiff to the defendant. (*Horton* v. *Bott*, 2 H. & N. 249; 26 Law J. Exch. 267; *Pye* v. *Butterfield*, 34 L. J. Q. B. 17.) In one case a defendant in ejectment was allowed to ask the plaintiffs in what character they claimed, whether as heirs-at-law or as grantees of any and what person claiming to be heir-at-law of one F., and through what links in either case they traced the heirship, and whether they had any other and what right or interest in the premises. (*Flitcroft* v. *Fletcher*, 11 Exch. Rep. 543; 25 Law J. Ex. 94.) In that case there were special circumstances, that the action was brought against a person who had been long in possession by a stranger, and of whose title the defendant was wholly ignorant. In ejectment by a lessor against a lessee, under a clause in the lease for determining it, if

the lessor required the property to build upon, and should *bonâ fide* determine to do so, interrogatories were allowed for the purpose of seeing whether the plaintiff *bonâ fide* intended to build. (*Winn* v. *Rose*, 36 L. J. C. P. 306.) The right to interrogate extends to interpleader. (*White* v. *Watts*, 12 C. B. N. S. 267; 31 Law J. C. P. 381.)

Particular cases where, and circumstances under which, a Plaintiff has been held entitled to interrogate.—When a defendant, a broker, has assumed to act as an agent, but is sued as a principal, interrogatories asking whether he acted as principal or agent in the transaction in question, and if, as agent, the name of his principal, were allowed, the plaintiff having to make out that the defendant had no authority to act as broker. (*Thol* v. *Leask*, 10 Exch. 704; 24 Law J. Rep. (N. S.) Exch. 142.) In actions against attorneys, surveyors, and the like, for negligence, they may be interrogated as to the steps they took in the particular business entrusted to them. (*Whateley* v. *Crowter*, 5 E. & B. 709; 25 Law J. Rep. (N. S.) Q. B. 163, *nom Whateley* v. *Crawford*.)

Where the defence was a composition deed under the Bankruptcy Act, 1861, the plaintiff was allowed to interrogate the defendant upon various circumstances as to the parties suggesting the deed, the trustees, its execution by him and them, and the means by which its execution by the creditors was obtained, for the purpose of showing that it was fraudulently concocted. (*Bayley* v. *Griffiths*, 1 H. & C. 429; 31 Law J. Rep. (N. S.) Exch. 477; *Goodman* v. *Holroyd*, 15 C. B. Rep. N. S. 839.) So, also, where the defence was a certificate of bankruptcy, interrogatories were allowed, for the purpose of showing that the defendant was guilty of an offence within the 251st section of the Bankrupt Act, 1849, and so impeaching the certificate. (*Bartlett* v. *Lewis*, 12 C. B. Rep. N. S. 249; 31 Law J. Rep. (N. S.) C. P. 230.

Cases where Interrogatories by Plaintiff have not been allowed.]—In an action of libel, interrogatories asking the defendant who was the publisher, whether he knew the composer, and who he was, and whether the defendant was indemnified, etc., were disallowed (*Tupling* v. *Ward*, 6 H. & N. 749; 30 Law J. Rep. (N. S.) Exch. 222); so in an action of slander the plaintiff was not allowed to ask the defendant whether he spoke the words charged or any other and what words, conveying a similar imputation, nor when, where, and to whom he spoke them (*Stern* v. *Sevastopulo*, 14 C. B. Rep. N. S. 737; 32 Law J. Rep. (N. S.) C. P. 268); but in a subsequent case interrogatories were allowed to compel a defendant to answer as to the words uttered, where it was shown he had stated publicly that the plaintiff had committed forgery, and the plaintiff was unable to discover from any of the persons who heard the statement what the exact words spoken by the defendant were (*Atkinson* v. *Fosbrooke*, 35 L. J. Q. B. 182) (*a*).

Interrogatories by a Defendant.]—A defendant may be entitled to a discovery respecting matters negativing the plaintiff's claim, as in an action for commission upon the sale of goods (*Rew* v. *Hutchins*, 10 C. B. Rep. N. S. 829; *Hunt* v. *Hewitt*, 7 Exch. Rep. 236). But in trover by assignees of a bankrupt, for bills of exchange, interrogatories asking the plaintiffs what case

(*a*) See note (*a*), *post*, p. 74.

they intended to set up at the trial, and on what ground they claimed the bills, whether as having been received after notice of an act of bankruptcy, or as having been given by way of fraudulent preference, or on any other and what ground, were disallowed, although the defendants swore that they did not know what acts of bankruptcy were relied on, nor how they could be made liable. (*Edwards* v. *Wakefield*, 6 E. & B. 462; see also *Finney* v. *Forward*, 35 L. J. Ex. 42.) Although interrogatories were allowed in one case to be put by a defendant, to enable him to ascertain how much money he ought to pay into court (*Wright* v. *Goodlake*, 3 H. & C. 540; 34 L. J. Rep. Ex. 82); in a later case it was ruled that a defendant who admits that he has committed the breach of contract complained of, cannot be permitted, except under very special circumstances, to interrogate the plaintiff respecting the amount of damage which he had sustained with a view to paying money into court (*Jourdain* v. *Palmer*, 35 L. J. Ex. 69).

An action for a malicious prosecution (*a*) on a charge of obtaining money under false pretences, the pretences being that the plaintiff had disbursed certain sums of money for the defendant's wife, the defendant was allowed to interrogate respecting money transactions of the plaintiff with the defendant's wife, and the circumstances under which he introduced himself to her (*Zychlinski* v. *Multby*, 10 C. B. Rep. N. S. 838).

The Judge of the County Court, on an objection to answer interrogatories, on being applied to (although in the first instance the registrar is to make the order, see Rules 80, 81, *post*) may order them to be reformed if the bulk of them appear to be framed carelessly and loose. (See *Phillips* v. *Lewin*, 34 L. J. Ex. 37.)

Attachment of Debts.

Examination of judgment debtor as to debts due to him.

60. It shall be lawful for any creditor who has obtained a judgment in any of the superior Courts to apply to the Court or a Judge for a rule or order that the judgment debtor should be orally examined as to any and what debts are owing to him before a Master of the Court, or such other person as the Court or Judge shall appoint; and the Court or Judge may make such rule or order for the examination of such judgment debtor, and for the production of any books or documents, and the examination shall be conducted in the same manner, as in the case of an oral examination of an opposite party before a master under this Act.

Judge may order an attachment of debts.

61. It shall be lawful for a Judge, upon the *ex parte* application of such judgment creditor, either before or after such oral examination, and upon affidavit by himself or his attorney stating that judgment has

(*a*) Although actions for malicious prosecution, libel, or slander, are not within the original jurisdiction of the County Court, where such actions are transferred under s. 10 of the new Act, it may be desirable to interrogate.

been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, to order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Judge or a master of the Court, as such Judge shall appoint, to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt.

Order for attachment to bind debts.

62. Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the Judge shall direct, shall bind such debts in his hands.

Proceedings to levy amount due from garnishee to judgment debtor.

63. If the garnishee does not forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the Judge may order execution to issue, and it may be sued forth accordingly, without any previous writ or process, to levy the amount due from such garnishee towards satisfaction of the judgment debt.

Judge may allow judgment creditor to sue garnishee.

64. If the garnishee disputes his liability, the Judge, instead of making an order that execution shall issue, may order that the judgment creditor shall be at liberty to proceed against the garnishee by writ, calling upon him to show cause why there should not be execution against him for the alleged debt, or for the amount due to the judgment debtor, if less than the judgment debt, and for costs of suit; and the proceedings upon such suit shall be the same, as nearly as may be, as upon a writ of revivor issued under "The Common Law Procedure Act, 1852."

Garnishee discharged.

65. Payment made by or execution levied upon the garnishee under any such proceedings as aforesaid shall be a valid discharge to him as against the judgment debtor to the amount paid or levied, although such proceeding may be set aside or the judgment reversed.

Attachment book to be kept by

66. In each of the superior Courts there shall be kept at the master's office a debt attachment book, and in such book entries shall be made of the attach-

the Masters of each Court (*a*).

ment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and the mode of keeping such books shall be the same in all the Courts; and copies of any entries made therein may be taken by any person, upon application to any master.

Costs of application.

67. The costs of any application for an attachment of debt under this Act, and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or a Judge.

For the object and scope of these provisions respecting the attachment of debts, see the Introductory Chapter, *ante*, p. 17.

See also the new Rules, *post*, Nos. 145–150.

"The Common Law Procedure Act, 1860," (23 & 24 Vict. c. 126) contains the following provisions:—

S. 28. "In proceedings to obtain an attachment of debts under 'The Common Law Procedure Act, 1854,' the Judge may in his discretion refuse to interfere where, from the smallness of the amount to be recovered, or of the debt sought to be attached or otherwise, the remedy sought would be worthless or vexatious."

S. 29. "Whenever in any proceedings to obtain an attachment of debts under the Act above-mentioned, it is suggested by the garnishee that the debt sought to be attached belongs to some third person who has a lien or charge upon it, the Judge may order such third person to appear before him, and state the nature and particulars of his claim upon such debt."

S. 30. "After hearing the allegations of such third person under such order, and of any other person whom by the same or any subsequent order the Judge may think fit to call before him, or in case of such third person not appearing before him upon such summons, the Judge may order execution to issue to levy the amount due from such garnishee, or the judgment creditor to proceed against the garnishee according to the provisions of 'The Common Law Procedure Act, 1854,' and he may bar the claim of such third person, or make such other order as he shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as he shall think just and reasonable."

S. 31. "The provisions of 'The Common Law Procedure Act, 1854,' so far as they are applicable, shall apply to any order, and the proceedings thereon, made and taken in pursuance of the herein next before-mentioned powers under this Act."

Although "The Common Law Procedure Act, 1860," does not *per se* apply to the County Court without an order in Council (and none of its provisions have been so applied), it may be doubted whether the above sections do not appy to the County Courts, the provisions of the Act of 1854 relating to the attachment of debts, having been so applied. The omission to extend them directly, is probably the result of an oversight.

(*a*) The remark "unnecessary in County Courts" has been affixed to this section in the official extract of the statute printed with the County Court Rules. (See Rule 146.)

It will be seen that the new Rules adapt s. 64 to the County Court procedure, by directing the suit against the garnishee to be by plaint in the nature of a *scire facias*. (See *post*, Rule 147.)

Who may apply.]—The creditor must be one who is entitled to enforce immediate payment; therefore, the holder of a bond of a corporation, containing a condition that all bondholders should be paid *pari passu*, is not such a creditor, since an attachment would give him priority over other bondholders. (*Kennett* v. *the Westminster Improvement Commissioners*, 11 Exch. 349; 25 Law J. Exch. 97.)

An executor cannot apply on a judgment obtained by his testator without making himself a party to the record by suggestion or writ of revivor (*a*). (*Brignard* v. *Simmons*, 5 E. & B. 59; 24 L. J. Q. B. 253.)

A party to an interpleader issue who has obtained an order for his costs, is a judgment creditor within the Act. (*Hartley* v. *Shemwell*, 1 B. & S. 1; 30 L. J. Q. B. 223.)

In the superior Courts if the debtor has been taken on a *ca. sa.*, this is so far a satisfaction of the judgment that no attachment can issue (*Jawvalde* v. *Parker*, 6 H. & N. 431; 30 L. J. Exch. 237); but, as in the County Courts, imprisonment on a judgment summons does not operate as a satisfaction, it seems that an attachment may be obtained after such an imprisonment.

What debts may be attached.]—Nothing but an actual debt can be attached; hence not a mere gratuity (*Innes* v. *the East India Company*, 17 C. B. 351; 25 L. J. C. P. 154), nor a legacy (*Macdonald* v. *Hollister*, 3 W. R. 522), nor a claim for unliquidated damages, as on a bond of indemnity (*Johnson* v. *Diamond*, 11 Exch. 73; 24 L. J. Ex. 217), nor the amount of a verdict in an action for unliquidated damages before judgment is signed (*Jones* v. *Thompson*, G. B. & E. 63; 27 Law J. Q. B. 234; *Dresser* v. *Johns*, 6 C. B. N. S. 429; 28 L. J. C. P. 281). Rents may be attached (*Mitchell* v. *Lee*, 36 L. J. Q. B. 154).

And the debt must be due to the judgment debtor himself; therefore, an annuity granted to the wife *dum sola*, cannot be attached (*Dingley* v. *Robinson*, 26 L. J. Exch. 55), but a debt due to one of several judgment debtors may be (*Miller* v. *Mynn*, 1 E. & E. 1075; 28 L. J. Q. B. 324), and so may a debt due to a testator's estate on a judgment recovered against the executor as such, notwithstanding a decree for administration of the estate (*Burton* v. *Roberts*, 6 H. & N. 93; 29 L. J. Exch. 484). Money in the hands of an official manager under a winding-up order (*ex parte Turner*, 30 L. J. Exch. 92), but not money paid into the Admiralty Court, as the proceeds of the sale of a ship (*the Wild Ranger*, 2 New Rep. 402).

The debt must be one which the judgment debtor would have a right to apply in discharge of the judgment; therefore, a debt which has been assigned cannot be attached. (*Hirsch* v. *Coutes*, 18 C. B. 757; 25 L. J. C. P. 315.)

Binding effect of order.]—If before payment, the judgment debtor becomes bankrupt, the debts are not bound as against his assignees (*Holmes* v. *Tutton*, 5 E. & B. 65; 24 L. J. Q. B. 346; *Turner* v. *Jones*, 1 H. & N. 878; 26 L. J. Exch. 262), but if payment is made before notice of a deed of assignment under

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(*a*) See the County Court proceedings analogous to these steps, *post*, Rules Nos. 201 to 216.

the Bankruptcy Act, and before registration of the deed, and in order to avoid execution under the garnishee order, such payment is a bar (*Wood* v. *Dunn, in error*, 36 L. J. Q. B. 27); but if the composition deed be executed and registered before actual payment, although after seizure under the garnishee order, the assignment prevails and execution must be withdrawn. (*Kent* v. *Tomkinson*, 36 L. J. C. P. 224.)

Payment by the Garnishee under the order.]—The payment, to be a discharge, should, it seems, be under an actual order to pay, and not under the mere *ex parte* attachment; and it must be an actual payment in money and not by bills, unless they are accepted as payment. (*Turner* v. *Jones*, 1 H. & N. 878; 26 L. J. Exch. 262.)

Equitable Defences.

Equitable defence may be pleaded.

83. It shall be lawful for the defendant or plaintiff in replevin in any cause in any of the superior Courts in which, if judgment were obtained, he would be entitled to relief against such judgment on equitable grounds, to plead the facts which entitle him to such relief by way of defence, and the said Courts are hereby empowered to receive such defence by way of plea; provided that such plea shall begin with the words "for defence on equitable grounds," or words to the like effect.

Equitable defence after judgment.

84. Any such matter which, if it arose before or during the time for pleading, would be an answer to the action by way of plea, may, if it arise after the lapse of the period during which it could be pleaded, be set up by way of audità querelâ.

Equitable replication.

85. The plaintiff may reply, in answer to any plea of the defendant, facts which avoid such plea upon equitable grounds; provided that such replication shall begin with the words "for replication on equitable grounds," or words to the like effect.

Court or Judge may strike out equitable plea or replication.

86. Provided always, that in case it shall appear to the Court or any Judge thereof that any such equitable plea or equitable replication cannot be dealt with by a Court of law so as to do justice between the parties, it shall be lawful for such Court or Judge to order the same to be struck out on such terms as to costs and otherwise as to such Court or Judge may seem reasonable.

See the observations in the Introductory Chapter, *ante*, p. 18.

Notice of any equitable defence must be given. See the new Rules, *post*, No. 95.

It seems that, applying s. 85 to the practice of the County Courts, any objection to the equitable defence on the grounds mentioned in that section must be left to the trial, and then heard

and determined by the Judge, either as a preliminary matter or upon the facts when fully disclosed.

So, also, any objection to the defence as disclosed on the face of the notice, on any other grounds, should be taken before the facts are heard; but the rules as to amendment of proceedings apply, of course, to the notice of an equitable defence as of any defence at law.

A notice of defence on equitable grounds will not, of course, prevent the defendant from availing himself of any other defence open to him; and if it is doubtful whether the facts amount to a defence in law, without the aid of equity, it will be prudent to give notice of the defence on equitable grounds, so as to be in a position at the trial to treat the defence either way.

It is, of course, quite beyond the scope of the present work to enter into the question of what constitutes an equitable defence under the above provisions. The general rule may be stated that an equitable defence must be such as would entitle the defendant, in a Court of Equity, to a perpetual and unconditional injunction.

Thus, a mistake in a contract which does not put an end to the defendant's liability, but on account of which a Court of Equity would reform the contract, cannot be set up as an equitable defence. In such a case a Court of Equity would reform the contract, and determine the rights of the parties upon the contract so reformed. But a Court of Common Law could not do this; for, if the defendant proved the alleged mistake, but failed to prove performance of the real contract, he would, it seems, still be entitled to a verdict, since the contract alleged would be disproved; and as a Court of Law would not reform the contract, the plaintiff would be without remedy. (*Perez* v. *Oleaga*, 11 Ex. 506; 25 L. J. Ex. 65. And see *Drain* v. *Harvey*, 17 C. B. 257; 25 L. J. C. P. 81.)

So in an action by drawer against acceptor of a bill of exchange, the defence that the bill was accepted upon an agreement that it was to be renewed from time to time, the defendant paying interest in the mean time at 10 per cent., and that the plaintiff refused to receive a renewed acceptance tendered to him, could not be set up as an equitable defence, for a Court of Equity would not have granted an absolute injunction, but only, on the terms of the defendant paying the £10 per cent. and carrying out his tender. (*Flight* v. *Gray*, 3 C. B. (N. S.) 320; 27 L. J. C. P. 13.)

But if the mistake alleged be such that, if remedied, it would appear that the defendant was never under any liability at all, such mistake may be set up as an equitable defence. Thus, it is a defence that the defendant signed the contract sued on in the form "A. B., agent for C. D.," supposing, by mistake, that those words absolved him from personal liability, and that it was agreed between and was the intention of the plaintiff and the defendant that the latter should not be personally liable. (*Wake* v. *Harrop*, 1 H. & C. 202; 31 L. J. Ex. 451.)

So in trover for goods, the defendant was allowed to set up that they were part of a purchase from the plaintiff, and had been by mistake omitted from the contract of purchase, and that the purchase had been completed. (*Steele* v. *Huddock*, 10 Ex. 643; 24 L. J. Ex. 78. See also *Borrowman* v. *Rossel*, 16 C. B. (N. S.) 58; 33 L. J. C. P. 111; *Burielor* v. *Mills*, 35 L. J. Q. B. 3). And in an action for practising within part of a certain

district, contrary to a covenant, the defendant was allowed to allege that that part had been included in the covenant by mutual mistake. (*Luce* v. *Izod*, 1 H. & N. 245; 25 L. J. Ex. 307.)

So, also, on the ground that the judgment of the Court would work out all the equities between the parties, a defence to an action on a bond or covenant that performance had been dispensed with by an instrument not under seal, or by some other matter, is allowed. (See *Clerk* v. *Laurie*, 1 H. & N. 458; 26 L. J. Ex. 39. See also Lush, 'Practice,' 3rd edit. pp. 463, 464.)

It is a good equitable defence that the plaintiff had assigned the debt, and the assignees had required the defendant to pay them, and that the plaintiff was suing in fraud of the assignment, and not with the assent of the assignees. (*Jeffs* v. *Day*, 35 L. J. Q. B. 99.)

An equitable defence is often founded on the distinction between the doctrine in equity and law as to the effect on the liability of a surety by giving time to a principal. An illustration of this distinction has been given in the Introductory Chapter (*ante*, p. 19, note (*b*)).

Equitable Reply.]—Not only is a defendant at liberty to set up an equitable defence, but the plaintiff may also in reply to any defence, allege equitable grounds. No notice is necessary in the County Court, for the obvious reason that a reply of this kind may be, and generally must be, in answer to a defence at common-law of which the plaintiff has not had any notice.

A plaintiff can only set up an equitable answer to a defence where (as in the case of an equitable defence) the facts would entitle the plaintiff to a perpetual and unconditional injunction against the setting up of the defence; and, further, the facts so set up in reply must not be such as to show that the plaintiff has only an equitable and not a legal claim against the defendant, otherwise he must fail in the action, which is, of course, founded on a supposed legal right. Subject to these rules, and if full justice can be done by the County Court as a Court of law, the facts may be proved by the plaintiff. Thus, where in an action against a surety the defendant sets up a release of the principal, the plaintiff may allege that, by a mistake in drawing up the agreement, it included the claim sued upon, and that the true agreement was completely performed by the plaintiff and the other party to it. (*Varley* v. *Barrett*, 1 C. B. N. S. 225; 26 L. J. C. P. 1.) So to a defence of a general release, it is an equitable answer by the plaintiff that at the time of executing it he did not know of the existence of the cause of action, and the defendant did, and that the plaintiff would not have executed the release had he known of it; for in such a case there is no need to reform the deed, and the plaintiff would be entitled in equity to a perpetual and unconditional injunction against its being set up. (*Lyall* v. *Edwards*, 6 H. & N. 337; 30 L. J. Ex. 193.) So, if an action be brought in the name of a nominal plaintiff by the party really interested, it is an answer to a defence of release that the release was given for the purpose of defrauding the real plaintiff. (*De Pothomio* v. *De Muttos* E. B. & E. 401; 27 L. J. Q. B. 260.) So to a defence of a composition deed, the plaintiff may show that the defendant had induced certain of the executing creditors to sign the deed by agreeing to give them pecuniary benefits over the other creditors. (*Dauglish* v. *Tennent*, 36 L. J. Q. B. 10.)

RULES, ORDERS, AND FORMS

FOR REGULATING THE

PRACTICE OF THE COUNTY COURTS.

1867.

We, GEORGE LAKE RUSSELL, JOHN BURY DASENT, JOHN WORLLEDGE, RUPERT ALFRED KETTLE, and WILLIAM FURNER, being Judges of County Courts appointed to frame Rules and Orders for regulating the Practice of the Courts, and Forms of Proceedings therein, under the 32nd section of "The County Courts Act, 1856," have, under the powers vested in us by the said Act and by "The County Courts Act, 1865," "The County Courts Act, 1867," and "The Companies Act, 1867," framed the following Rules, Orders, and Forms, and we do hereby certify the same to the Lord Chancellor accordingly (*a*).

The Rules, Orders, and Forms now in use in the County Courts, except in proceedings under the Charitable Trusts Acts, the Probate Acts, and "The Bankruptcy Act, 1861," shall, on and from the 1st day of January, 1868, cease to be used, and in lieu thereof the following shall, on and from such day, be the Rules, Orders, and Forms in force and used in the said Courts.

Interpretation (b).

In the following Rules and Orders the words "Home Court" shall mean the Court from which process is

(*a*) The misprints and omissions in the Rules and Forms, as originally issued, have been corrected in accordance with the Direction of the Committee of Judges of the 20th January, 1868.

(*b*) Although in the official copy the Rules are not headed "Common Law," the Rules 1 to 279 are so described in the "Contents and Forms."

originally issued; and the words "Foreign Court" shall mean the Court of the district into which process is issued from another Court; and the words "Home District" shall mean the district of the Home Court; and the words "Foreign District" shall mean the district of the Foreign Court; and the words "on oath" shall mean "on oath vivâ voce or by affidavit;" and the words "return day" shall mean "the return day of the summons;" and the word "Treasurer" shall, where there is no Treasurer of the Court, mean the Superintendent, for the time being, of the County Court Department of the Treasury; and the words "clear days" shall mean that in all cases in which any particular number of days is prescribed for the doing any act or for any other purpose, the same shall be reckoned exclusive both of the first and of the last day; and unless there be something in the context inconsistent therewith, the provisions of s. 142 of 9 & 10 Vict. c. 95, shall apply to the interpretation of these Rules.

9 & 10 Vict. c. 95, s. 142.

Sittings of the Court.

9 & 10 Vict. c. 95, s. 56.

1. Every judge shall appoint the days and hours for holding his Courts; and a notice of the day and hour on which each Court will be holden shall, three calendar months before the holding thereof, be affixed in some conspicuous place in the Court House and in the registrar's office; and whenever any day or hour so appointed for holding the Court shall be altered, notice of such alteration shall immediately be affixed in like manner; but any judge may from time to time hold additional and adjourned Courts.

30 & 31 Vict. c. 142, ss. 16, 17.

2. No registrar shall act under sections 16 & 17 of 30 & 31 Vict. c. 142, on any day upon which the judge does not sit at the Court.

3. Two Courts shall not be holden before the same judge on one day, unless with the consent of the Lord Chancellor; but this rule shall not apply to the holding of an adjourned Court.

Infant (a).

9 & 10 Vict. c. 95, s. 64.

4. Where an infant applies to enter a plaint for any cause of action (other than for wages or piece-work, or for work as a servant) he shall procure the attendance of

(a) See 'Manual of Practice and Evidence in the County Courts,' 3rd edit. p. 36.

a next friend, at the office of the registrar, at the time of entering the plaint; and no plaint shall be entered until the next friend has undertaken, in the form set forth in the schedule, to be responsible for costs, who, on entering into such undertaking shall be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit; and the cause shall proceed in the name of the infant by such next friend, and the undertaking shall be filed by the registrar; but no order of the Court shall be necessary for the appointment of such next friend. If the plaintiff fail in, or discontinue his suit, and do not pay the amount of costs awarded by the Court to be paid by him to the defendant, proceedings may be taken for the recovery of such amount from the next friend as for the recovery of any debt ordered to be paid by the Court.

Registrar's Duties.

5. The offices of the County Courts may from time to time be closed by special order of the Lord Chancellor on such days as may be mentioned in any such order.

6. The registrar shall keep an office at each place where the Court of which he is registrar is holden, and such office shall be kept open every day from ten o'clock in the morning until four o'clock in the afternoon, except on Christmas Day, Good Friday, the Saturday next after Good Friday, or any day appointed by royal proclamation for a public fast, humiliation, or thanksgiving, and except also on Saturdays, on which day the office may be closed at one o'clock in the afternoon; provided, that where Saturday is the market day of the town in which the Court is holden, the office shall not be so closed, but may be closed at one o'clock on some other day of the week instead of Saturday, which day shall be fixed upon for such purpose by the judge, and shall not afterwards be changed except by his leave: Provided that an office need not be kept open in more than one place within the district of a Court, although the Court is holden at more than one place within the district, unless the Lord Chancellor shall otherwise order. Provided also, that during the days on which in such district the Court is held in any place other than in the place where the Registrar's Office is situate, or on which an office is open at such other place, the office may be closed on such

days in the place in which the office is required generally to be kept open.

9 & 10 Vict. c. 95, s. 27.

7. The registrar shall keep the books in the forms heretofore in use; and every entry in such books shall have a number prefixed, corresponding with the number of the plaint to which the entry relates.

9 & 10 Vict. c. 95, s. 26.

8. Whenever the registrar, or his lawful deputy, is absent from the sitting of a Court, the judge shall appoint a deputy to act on behalf of the registrar; and an entry of such appointment and the cause of such absence (if known) shall be made on the minutes of the Court.

Ib.

9. Whenever a registrar appoints a deputy, the reason of such appointment shall be entered on the minutes of each Court for which such deputy acts.

10. The registrar of the Court shall issue all summonses and warrants to the bailiff forthwith after the plaints are entered or warrants applied for.

11. Where a summons is required to be served in a foreign district the registrar shall transmit the same and a copy thereof to the bailiff of the Foreign Court on the same day as the plaint is entered, with a letter according to the form in the schedule, unless the judge of the home Court shall order the summons in that particular case to be served by the bailiff of the Home Court; and if the summons be returned to the registrar by the bailiff of the Foreign Court, not served, the registrar shall forthwith give notice to the plaintiff of such non-service.

12. The registrar shall in all cases where by these Rules particulars are required, annex to the summons a copy of the plaintiff's particulars, sealed with the seal of the Court; and shall also make and deliver to the bailiff a true copy of the summons.

13. The registrar shall send the letter mentioned in the last paragraph of section 2 of 30 & 31 Vict. c. 142, to the name, description, and address of the plaintiff as given in the affidavit.

14. The registrar shall enter in the 'Notice Book' all notices and letters sent by him, and all particulars required by the form of such book.

15. Moneys to be paid into Court under the order of the judge may be so paid, during office hours, on every day on which such office is open.

16. Searches may be made and the money to which suitors are entitled shall be paid out upon demand (in cash if required) on three days, at the least, in each week, such days to be fixed by the registrar from time to time, with the approbation of the judge, and to be printed or written on the plaint note: Provided that, for the purpose of enabling the registrar to furnish the list of balances in the ledgers according to the requirements of the Commissioners of Her Majesty's Treasury, no searches shall be made or money paid out of Court during one week in each year, of which week due notice shall be affixed in some conspicuous place in the office of the registrar. 19 & 20 Vict. c. 108, s. 45.

17. Whenever money is paid into or deposited in Court, whether before or after judgment, an acknowledgment in writing of such payment or deposit shall be given on the summons or on the order. 9 & 10 Vict. c. 94, s. 82. 19 & 20 Vict. c. 108, s. 45.

18. All the books of the Court, including the bankers' book and cash book, shall at all times be open to the inspection of the treasurer. 9 & 10 Vict. c. 95, s. 27

19. No registrar, deputy registrar, registrar's clerk, bailiff, broker, or other officer of the Court, and no partner or clerk of any such officer, shall, on account of suitors, sign the ledger, or any other book, or receive money, or otherwise act as an agent for that purpose.

20. No registrar, deputy registrar, registrar's clerk, bailiff, broker, or other officer of the Court, or any practising attorney, or clerk of such attorney, shall become surety in any case where, by the practice of the Court, security is required,

High Bailiff's Duties.

21. Whenever the high bailiff does not attend any sitting of the Court, the cause of his absence shall be entered by the registrar on the minutes of the next succeeding Court. 9 & 10 Vict. c. 95, s. 33.

22. The high bailiff shall keep books and make returns in the forms heretofore in use. Ib.

23. The high bailiff or a sub-bailiff of the Court shall attend for the purpose of receiving summonses, or for the performance of other duties, at the office of the Ib.

registrar once at least every day; and shall compare and examine the copy of each summons delivered to him by the registrar, so as to enable him to prove its correctness.

24. The office of the high bailiff of a County Court, in which the plaints entered shall exceed six thousand in the year, shall be open to the public for the purpose of answering inquiries, giving information, or for any other purpose connected with the duties of the bailiff during the same hours as the office of the registrar of the Court is to be kept open.

9 & 10 Vict. c. 95, ss. 61, 62.

25. The high bailiff shall serve or cause to be served process sent to him for service from other Courts.

9 & 10 Vict. c. 95, s. 33.

26. If the service of the summons has been personal, the bailiff who served the same shall indorse on the copy of the summons delivered to him by the registrar the fact and mode of such service; and if the service has not been personal, he shall indorse on the copy of the summons the statement which has been made by the person to whom the summons was delivered, or other circumstances from which it may be inferred that the service of the summons has come to the knowledge of the defendant, and if the summons has not been served, the bailiff shall indorse on such copy the fact, and the reason of such non-service, and shall deliver it to the registrar with the list of summonses hereafter mentioned, unless the judge shall otherwise order, and such copy shall be produced at the time of the trial by the registrar or high bailiff, as the judge may require.

9 & 10 Vict. c. 95, s. 62

27. Where the summons is required to be served in a foreign district by the bailiff of that district, he shall, eight clear days at least before the return-day, transmit the copy thereof to the registrar of the Home Court, with an affidavit of such service, if the summons has been served, and if it has not been served, he shall return the summons with an affidavit stating why it has not been served: and the affidavit shall state the same particulars as to service or non-service as are required to be indorsed on a summons; and if such affidavit be defective the bailiff shall amend the same at his own expense in conformity with the direction of the judge of the Home Court.

28. Where the bailiff neglects to return to the registrar of the Home Court the copy of the summons with the affidavit annexed, within the time above pre-

scribed, the judge of the Home Court may make an order directing the bailiff of the Foreign Court to pay to the plaintiff such sum as the judge may think reasonable, as compensation for the loss of time and expense caused to the plaintiff by the neglect of the bailiff; and a memorandum of such order shall be made in the minute book, and the registrar of the Home Court shall transmit to the bailiff of the Foreign Court a notice in the form annexed, and if the bailiff shall not remit to the registrar of the Home Court the sum directed by the order to be paid, the registrar shall transmit to the treasurer of the Foreign Court a copy of the notice certifying thereon the neglect of the bailiff to pay the money as required, and the treasurer shall deduct such sum from any payment he may thereafter make to the bailiff.

29. Seven clear days before the day of holding any Court the high bailiff shall deliver to the registrar a list of all summonses on plaints before judgment, issued to him, returnable at such Court, and such return shall state the mode of service or the cause of non-service of each summons, and the high bailiff shall, at the same time, unless the judge shall otherwise order, deliver to the registrar the copy of every such summons which has been served, and the summons itself when not served. 9 & 10 Vict. c. 95, s. 33.

30. Where a summons has not been served, and the summons remains in the hands of the bailiff, he shall, at the time of making out the list aforesaid, give notice to the plaintiff of the fact of such non-service in the form set forth in the Schedule.

31. In all cases where a summons cannot be served personally, it shall be left at the house or place of dwelling or place of business of the defendant mentioned therein, unless the bailiff shall ascertain that the defendant has removed to some other place within the district; and whenever the bailiff's return of service of such summons shall make it doubtful whether the service will be held sufficient, the high bailiff shall send the plaintiff a notice in the form in the Schedule.

32. The high bailiff shall enter in the "Order Book" all orders for the payment of money or costs, or both, which he shall have received, and the date on which he shall have caused the same to be posted.

9 & 10 Vict. c. 95, ss. 33 and 94.

33. The high bailiff shall enter in "The High Bailiff's Warrant Book" every warrant which he has been required to execute, and shall state from time to time therein what he shall have done under each warrant, and if the same be not executed within one calendar month from the day of its delivery to him, why it was not executed; and the high bailiff shall, at all reasonable times, give to a suitor every information that he may reasonably require as to the execution or non-execution of any warrant, which has been issued at his instance.

34. Every bailiff levying or receiving any money by virtue of any process issuing out of the Court of which he is bailiff, shall, within twenty-four hours from the receipt thereof, pay over the same to the registrar of such Court, and shall file such process and retain the same in his custody.

9 & 10 Vict. c. 95, ss. 33 and 104.

35. Whenever a warrant required to be executed in a foreign district has not been executed within one calendar month from the day of its delivery, the bailiff of the Foreign Court shall, on the day after the termination of such month, make a return to the registrar of the Home Court of what he shall have done under such warrant, and why it has not been executed, and when the same warrant has not been executed during the time it is in force such bailiff shall return the same to the registrar of the Home Court within twenty-four hours from the expiration of such time, and shall indorse on such warrant the reason why the same could not be executed, and he shall sign such indorsement, but the bailiff shall return such warrant to the Home Court at any time, although unexecuted, if he shall be directed so to do by the registrar of the Home Court, or shall give such information as such registrar may require in the matter of the warrant.

Plaint.

36. Where it shall appear, on an application for the entry of a plaint, that the plaintiff does not reside in England, the plaint shall not be entered until security for costs, by deposit of money or otherwise, shall have been given to the satisfaction of the registrar.

9 & 10 Vict. c. 95, s. 59.

37. Every plaint shall be entered in the "Plaint Book" before issuing the summons.

38. Where the plaintiff is unacquainted with the defendant's Christian name, the defendant may be described by his surname, or by his surname and the initial

of his Christian name, or by such name as he is generally known by, and the defendant may be so described in the summons; and in the event of the plaintiff or defendant not appearing, the proceedings under sects. 79 and 80 of 9 & 10 Vict. c. 95(*a*) may be taken as if the true Christian name and surname had been stated in the summons, and all subsequent proceedings thereon may be taken in conformity with such description, but without prejudice to any amendment made at any future time by direction of the judge. 9 & 10 Vict. c. 95, ss. 79 and 80.

39. Where under section 1 of 30 & 31 Vict. c. 142, the leave of the judge or registrar is required, a plaint shall not be entered unless the judge or registrar shall be satisfied, by statement on oath or affidavit, or statutory declaration of the plaintiff, or of some other person on his behalf, that the defendant, or one of the defendants, has within the then last six calendar months dwelt or carried on business in the district of the said Court, or that the cause of action or suit arose wholly or in part within the said district. 30 & 31 Vict. c. 142, s. 1.

40. Where a plaintiff requires a summons to issue in the form contained in Schedule (B) to 30 and 31 Vict. c. 142, he may at the time of the filing of the affidavit, deliver to the registrar a statement in writing, signed by himself or his attorney, stating that he will serve the summons by himself, his attorney, or by some clerk or servant in the permanent employ of himself or his attorney, and it shall be served accordingly; but in default of such notice the summons shall be served by a bailiff of a County Court. 30 & 31 Vict. c. 142, s. 2.

41. Where the plaintiff does not require the order upon the judgment to be for payment forthwith he shall, at the time of the entry of the plaint, deliver to the registrar a statement in writing, signed by himself or his attorney or agent, of the time or times at which, and of the instalments, if any, by which, he consents to accept payment, together with as many copies of such statement as there are defendants, and a copy of such statement, sealed with the seal of the Court, shall be annexed to the summons, and served therewith. 30 & 31 Vict. c. 142, s. 2.

42. Where a plaintiff requires the summons to be served otherwise than by a bailiff, the registrar shall enter the plaint and deliver the summons to the plaintiff for service forthwith, if so required.

(*a*) See 'County Court Practice and Evidence,' third edition, p. 105.

Particulars.

9 & 10 Vict. c. 95, s. 59.

43. On entering the plaint, the plaintiff shall in all cases, where the sum sought to be recovered shall exceed forty shillings, or where the summons is to issue in the form contained in Schedule (B) of 30 & 31 Vict. c. 142, deliver at the office of the registrar as many copies of a statement of the particulars of his demand or cause of action as there are defendants, and an additional copy to be filed, and where the demand exceeds fifty pounds, but the plaintiff desires to abandon the excess or to admit a set-off, and sues in a County Court for the residue, the abandonment or the admission of the set-off shall be entered on the particulars before service; and in all cases the particulars shall be deemed part of the summons.

9 & 10 Vict. c. 95, s. 63. 19 & 20 Vict. c. 108, s. 24.

8 & 9 W. III. c. 11.

44. In actions for penalties to secure the performance of covenants, within the meaning of the 8 & 9 Will. III. c. 11, the plaintiff shall deliver particulars of the breaches on which he relies, in the same manner as required by the last rule, which, when delivered, shall be deemed part of the summons; and if the Court shall be of opinion that the plaintiff is entitled to recover, judgment shall be entered for the penalty, where the penalty does not exceed the amount over which the Court has jurisdiction, and where the penalty does exceed such amount, then for the amount over which the Court has jurisdiction, and an entry shall be made on the minutes of the damages awarded to the plaintiff, and execution may issue for the amount of such damages; and in case of subsequent breaches, the plaintiff may enter a plaint and sue out a summons in the nature of a *scire facias* on such judgment, and shall deliver particulars of such subsequent breaches in the manner before mentioned, and which shall be deemed part of such summons.

45. If the amount claimed in any case include a fraction of a penny, such fraction shall not be entered in the books of the Court, and judgment shall not be given for such fraction.

Plaint Note.

9 & 10 Vict. c. 95, s. 59.

46. At the time of entering the plaint the registrar shall give to the plaintiff or his attorney or agent a note under the seal of the Court, according to the form in the Schedule; and no money shall be paid out of Court to the plaintiff or his attorney or agent, unless on pro-

duction of such note, provided that in the event of such note being lost or destroyed no money shall be paid to any person unless it be proved on oath to the satisfaction of the registrar that the person applying is the plaintiff or his agent authorized in that behalf.

Summons to appear to a Plaint.

47. The summons to appear to a plaint shall be in the form set forth in the Schedule, and shall be dated of the day on which the plaint was entered, and the date thereof shall be the commencement of the suit. 9 & 10 Vict. c. 95, s. 59.

48. Such summons may be returnable either at the next Court after the entry of the plaint, or by leave of the Court or registrar at any subsequent Court to be held within three calendar months.

49. Where a summons is issued by leave of the judge or registrar, the words "by leave of the Court" or "by leave of the registrar," as the case may be, shall be written on the face of the summons.

50. Where a summons has not been served, successive summonses may be issued without entering a new plaint; unless the non-service has been caused by the fact of the defendant's having removed from the address given before the entry of the plaint, or of the plaintiff having given a wrong or insufficient address, but if the bailiff shall ascertain that the defendant has removed to some other place within the district of the Court, he shall serve the summons at such other place, indorsing on the copy thereof the new address; and the successive summons or summonses shall bear the same date and number as the summons first issued, which date and number shall be written in red ink in the "Plaint Book," and such summonses shall be a continuance of the first summons; provided that no successive summons shall be issued on a plaint which has been entered more than three calendar months.

Service of Summons to appear to a Plaint.

51. A summons to appear to a plaint, where it is to be served in the home district, should, in order to ensure its service, be delivered to the bailiff at least twelve clear days, and where it is to be served in a foreign district fifteen clear days before the return day, but it shall, in either case, be served at least ten clear days before the return-day thereof; provided that a summons may be issued at any time before the return-day, on production 9 & 10 Vict. c. 95, s. 59.

by the plaintiff to the registrar of an affidavit showing that the defendant is about to remove out of the ordinary jurisdiction of the Court; and service of such summons at any time before the return-day may be deemed good service, if, at the hearing, the judge is satisfied on the evidence on oath before him, that such party was about to remove out of the ordinary jurisdiction of the Court, but in every such case, whether such proof be given or not, the judge may, in his discretion, and on such terms as he shall think fit, adjourn the hearing.

52. The service of the summons, except in the cases hereinafter specially provided for, shall be either personal, or by delivering the same to some person, apparently sixteen years old, at the house or place of dwelling, or place of business, of the defendant; but no place of business shall be deemed the place of business of the defendant unless he shall be the master or one of the masters thereof.

53. Where a defendant is living or serving on board of any ship or vessel, it shall be sufficient service to deliver the summons to the person on board who is, at the time of such service, apparently in charge of such ship or vessel.

54. Where a defendant is residing or quartered in any barracks and serving Her Majesty as a soldier or marine, it shall be sufficient service to deliver the summons at the barracks to the adjutant of the corps, or to any officer or sergeant of the company or troop to which such soldier or marine belongs.

55. Where a defendant is a prisoner in a gaol, it shall be sufficient service to deliver the summons at the gaol to the governor or any person appearing to be the head officer in charge thereof.

56. Where a defendant is working in any mine or other works underground, it shall be sufficient service to deliver the summons, at the mine or works, to the engine-man, banks-man, or other person apparently in charge of the mine or works.

57. When the defendant is employed and dwells in any lunatic or other public asylum, or in any common gaol or house of correction, it shall be sufficient service to deliver the summons to the gate-keeper or lodge-keeper of the asylum, gaol, or house of correction.

58. Service of the summons may be effected on a railway company or other corporation by delivering the

summons to a secretary, station master, or clerk of the defendant, at any station or office of the defendant within the district of the Court in which the summons is to be served.

59. Where a defendant keeps his house or place of dwelling or place of business closed, in order to prevent a bailiff from serving the summons, it shall be sufficient service to affix such summons on the door of such house or place of dwelling or place of business.

60. Where a bailiff is prevented by the violence or threats of the defendant, or of any other person or persons in concert with him, from personally serving such summons, it shall be sufficient service to leave such summons as near to the defendant as practicable.

61. Where the summons has not been served personally, or under the provisions of the last four rules, and the defendant does not appear, in person or by his attorney or agent, at the return-day, the cause may proceed if the judge or registrar is satisfied on the evidence on oath before him, that the service of such summons has come to the knowledge of the defendant before the return-day, but no such evidence shall be necessary in the cases specially mentioned in the last four rules.

62. Whenever a summons has been served in one of the modes herein-before mentioned, but it appears that it has come to the knowledge of the defendant less than ten clear days before the return-day, the cause may, at the discretion of the judge or registrar, proceed or be adjourned, whether the defendant appears or not at the hearing.

63. The twelve rules preceding this rule shall not apply to summonses issued under s. 28 of 19 & 20 Vict. c. 108,(*a*) or under s. 2 of 30 & 31 Vict. c. 142, or under "The Summary Procedure on Bills of Exchange Act, 1855," and except where otherwise hereafter provided.

64. Where a summons shall issue under s. 18 of 19 & 20 Vict. c. 108,(*b*) or s. 3 of 30 & 31 Vict. c. 142, the same shall be served by the bailiff of the district within which the defendant shall dwell or carry on business, unless the judge shall in each case otherwise specially order; provided that this rule shall not interfere with the general power, now vested in the

(*a*) See *ante*, p. 29. (*b*) See *ante*, pp. 29, 30.

bailiff of the Court from which the summons has issued, to serve the same within five hundred yards of the boundary of his district.

65. The above rules as to the mode, but not those as to the time of service of summonses to appear to a plaint, shall apply to the mode of service of all summonses whatsoever, except where otherwise directed by statute or by these rules.

66. No summons, order, or other process of notice, shall be served on Sunday, Christmas Day, Good Friday, the Saturday next after Good Friday, or on any day appointed by royal proclamation for a public fast, humiliation, or thanksgiving, or on days on which the offices of the Courts shall be closed by order of the Lord Chancellor; but such days shall be counted in the computation of the time required by these rules in respect of such service.

Objection to Jurisdiction.

19 & 20 Vict. c. 108, s. 39.

67. A defendant intending to avail himself of the power given by s. 39 of 19 & 20 Vict. c. 108,(*a*) to object to an action being tried in the County Court,

30 & 31 Vict. c. 142, s. 7.

shall give notice personally or by post of such intention to the registrar and to the plaintiff five clear days before the return-day, according to the form set forth in the Schedule; and shall therein name the parties whom he proposes to be his sureties, or state therein his willingness to deposit money in lieu of giving security, and if he shall fail to give such security or make such deposit before the return-day, or shall fail to give such notice of his intention to object as aforesaid, he shall not be entitled to object to the action's being tried in the County Court.

Action of Contract sent for Trial by Superior Court.

30 & 31 Vict. c. 142, s. 7.

68. Where a judge of a Superior Court orders a cause to be tried in a County Court under section 7 of 30 & 31 Vict. c. 142, the plaintiff shall, with the original writ and the judge's order, lodge with the registrar of the County Court named in such order a statement of the name, address, and description of himself and of the defendant, and if the writ has not been especially indorsed a statement of the particulars of his demand or cause of action, and as many copies of such last-mentioned statement as there are defendants; and there-

(*a*) See *ante*, p. 67.

upon the registrar shall appoint a day for the hearing of the cause, and shall indorse on the writ the date of the lodgment thereof and of such statement, if any.

69. Unless the judge of the County Court shall otherwise order, any cause sent by order of a judge of a Superior Court under section 7 of 30 & 31 Vict. c. 142, to be tried in a County Court, shall be heard on the Court day for such County Court district for which summonses on plaints are then being made returnable; and the registrar shall give notice of the day to the parties, by post or otherwise, ten clear days before such day; and where a statement of the particulars of the plaintiff's demand or cause of action shall have been lodged, shall, with the notice, send to the defendant, or to each of the defendants if more than one, a copy thereof, sealed with the seal of the Court. 30 & 31 Vict. c. 142, s. 10.

Action of Tort remitted by Superior Court.

70. Where any action of Tort is remitted by order of a judge of a Superior Court under section 10 of 30 & 3 Vict. c. 142, to be tried in a County Court, the plaintiff shall, at whatever stage of the proceedings such order is made, with the original writ and the judge's order, lodge with the registrar of the County Court named in such order a statement of the names, addresses, and descriptions of himself and of the defendant, and a concise statement in writing, signed by himself or his attorney, of his cause of action, and of the particulars thereof, and as many copies thereof as there are defendants, and thereupon the registrar shall appoint a day for the hearing of the cause, and shall indorse on the writ the date of the lodgment thereof and of such statement. 30 & 31 Vict. c. 142, s. 10.

71. Unless the judge of the County Court shall otherwise order, any action of Tort remitted by order of a judge of a Superior Court under section 10 of 30 & 31 Vict. c. 142, to be tried in a County Court, shall be heard on the Court day for such County Court District for which summonses on plaints are then being made returnable, and the registrar shall give notice of the day to the parties, by post or otherwise, ten clear days before such day, and shall, with the notice thereof, send to the defendant or to each of the defendants if more than one, a copy of the statement of the plaintiff's cause of action, sealed with the seal of the Court.

72. Where in any action for libel or slander remitted 30 & 31 Vict. c. 142, s. 10.

under section 10 of 30 & 31 Vict. c. 142, to be tried in a County Court, the Defendant intends to avail himself of the provisions of sections 1 & 2 of 6 & 7 Vict. c. 96, (*a*) he shall give notice in writing of such intention, signed by himself or his attorney, to the registrar five clear days before the day appointed for the trial of the action.

Payment into Court before Judgment.

9 & 10 Vict. c. 95. s. 82.

73. Where the defendant is desirous of paying money into Court, it shall, except where otherwise expressly provided, be paid five clear days before the return-day, with court fees proportionate to the amount paid in, and the attorney's costs, if any; and the registrar shall within twenty-four hours from the time of such payment send to the plaintiff notice thereof by post: Provided, that at any time before the return-day the defendant may pay money into Court, with such costs as aforesaid, and the registrar shall give notice thereof to the plaintiff as aforesaid; but where money is so paid in less than five clear days before the return-day, it shall be lawful for the Court to order the defendant to pay such costs as the plaintiff shall have incurred in preparing for trial, before the notice of such payment was received by him, or in attending the Court.

9 & 10 Vict. c. 95, s. 82.

74. If the plaintiff elect to accept, in full satisfaction of his claim, including costs, such money as shall have been paid into Court by the defendant, and shall send to the registrar and to the defendant by post, or leave at the registrar's office and at the defendant's place of dwelling or place of business, a written notice, stating such acceptance, within such reasonable time before the return-day as the time of payment by the defendant has permitted, the action shall abate, and the plaintiff shall not be liable to any further costs. But in default of such notices from the plaintiff the cause may proceed.

30 & 31 Vict. c. 142, s. 10.

75. Where a defendant, in an action of libel remitted under section 10 of 30 & 31 Vict. c. 142, to be tried in a County Court, pays money into Court under section 2 of 6 & 7 Vict. c. 96, the last two Rules shall apply to and be observed with reference to such payment into Court, so far as they are applicable.

(*a*) This statute enables a defendant to apologize, or to pay money into Court by way of amends coupled with an apology.

Inspection of Documents. (*a*)

76. Where in any action the plaintiff or defendant is desirous of inspecting any written or printed document or instrument, in which he has an interest, and to the production of which he is entitled for the purposes of the action, and which shall be in the possession or power or under the control of the other party, such plaintiff or defendant may, five clear days before the day of hearing, give notice to the other party, by post or otherwise, that he or his attorney desires to inspect any such document or instrument, describing the same, at any place to be appointed by the other party; and if such other party shall neglect or refuse to appoint such place, or to allow such plaintiff or defendant or his attorney to inspect such document or instrument within three clear days after receiving such notice, the judge may, in his discretion, on the day of hearing, adjourn the cause and make such order as to costs as he shall think fit.

77. Where a party desires the production of any document or documents to the production of which he is entitled for the purpose of discovery or otherwise, he shall make an affidavit that such document or documents is or are in the possession or power of the opposite party, and the registrar shall, upon the delivery to him of the affidavit and a copy thereof, file the affidavit and make an order (annexing thereto the copy of the affidavit), that the party against whom such application is made shall answer on affidavit stating what documents he has in his possession or power relating to the matters in dispute, or what he knows as to the custody they or any of them are in, and whether he objects, and if so on what grounds to the production of such of the documents as are in his possession or power; and the time within which the opposite party shall return such affidavit to the Court shall be stated in the order, which order shall be served by the bailiff of the Court.

78. The party against whom such order is made shall answer an affidavit according to the terms of the order, and return the affidavit and a copy thereof to the Registrar of the Court, by post or otherwise, within the time stated in the order; and the registrar shall immediately upon receiving such affidavit file the same, and transmit by post or otherwise to the party making

(*a*) See *ante*, p. 69.

the application the copy of the affidavit, sealed with the seal of the Court.

79. Where, after such last-mentioned affidavit is filed, the party making the application requires a further order thereon, he shall apply to the registrar for such further order, and if there be no matter of fact or law in dispute between the parties, the registrar shall make an order in writing, in accordance with the facts; but if there shall be any matter of fact or law in dispute between the parties, the registrar shall transmit both affidavits to the judge, who shall direct the registrar to give notice by post or otherwise to both parties of a time and place when and where he will hear the application, and make such order thereon as shall be just.

Interrogatories. (*a*)

"The Common Law Procedure Act, 1854," sect. 52.

80. Where a party desires to interrogate the opposite party, he shall apply to the registrar for leave to deliver interrogatories, and upon making such application he shall file an affidavit made by himself and his attorney, or agent, or by leave of the registrar by his attorney or agent only, stating that the deponent believes that the party proposing to interrogate will derive material benefit in the cause from the discovery which he seeks, and that there is a good cause of action or defence upon the merits. And upon such application the registrar shall order that the applicant may, within a time to be named in such order, deliver to the opposite party interrogatories in writing upon any matter as to which discovery may have been sought, and shall in such order require the party interrogated to answer the questions in writing by affidavit, and to return such answers to the registrar for filing within such time to be appointed by the registrar as shall enable the party making the application to use the answers so returned as evidence at the hearing.

81. Where the party served with the order shall object to answer the interrogatories, or any of them, he shall file an affidavit stating his grounds for objecting, and that he will be prepared to show cause to the Court at the return-day against his being required to answer them.

82. Where a party required to answer interrogatories shall successfully show cause against an order requiring

(*a*) See *ante*, p. 70.

him to answer them, the judge may direct the cause to proceed, or adjourn it as he thinks fit; but if the party objecting shall not show sufficient cause for his objection, the judge may adjourn the cause, and make an order for the answering of the interrogatories by such time, and for the payment of such costs, as he may think fit.

Oral Examination. (*a*)

83. Where an order is made under section 53 of "The Common Law Procedure Act, 1854," it may be in the form given in the Schedule to these Rules.

84. In executing any order made under section 53 of "The Common Law Procedure Act, 1854," the registrar shall transcribe the answers given by the witnesses examined before him, and shall read over the answers so transcribed, and the witness shall sign his name at the foot thereof, and the registrar shall thereupon file the same as the deposition of such witness.

Order by a Judge acting for another.

85. Where any judge of County Courts acting for any other judge of County Courts under section 20 of the 30 & 31 Vict. c. 142, shall sign any order or other document the registrar shall make a memorandum at the foot thereof according to the form in the schedule.

Withdrawal by Plaintiff.

86. If the plaintiff be desirous of not proceeding in the cause, he may give notice thereof to the registrar and to the defendant by post, and after the receipt of such notice the defendant shall not be entitled to any further costs than those incurred up to the receipt of such notice, except the costs of attending the Court on the return-day, unless the judge shall otherwise order.

Cause sent for Trial from a Superior Court.

87. Where any action, under sect. 26 of 19 & 20 Vict. c. 108, (*b*) is ordered to be tried in a County Court, the registrar of the County Court mentioned in the order shall enter the same in the minute book of the Court for hearing on the day appointed by the judge of such Court. 19 & 20 Vict. c. 108, s. 26.

(*a*) See *ante*, p. 71.

(*b*) See *ante*, p. 32.

Defences. (*a*)

9 & 10 Vict. c. 95, s. 76.

88. Where the defendant intends to rely on a set-off, infancy, coverture of defendant, a statute of limitation, or discharge of defendant under a bankrupt or insolvent Act, the truth of the libel or slander, or an equitable or statutory defence, his notice shall contain the particulars hereinafter mentioned with reference to such grounds of defence: Provided, that in case of non-compliance with those rules which apply to such grounds of defence, and of the plaintiff's not consenting at the hearing to permit the defendant to avail himself of such defence, the judge may, on such terms as he shall think fit, adjourn the hearing of the cause to enable the defendant to give such notice.

9 & 10 Vict. c. 95, s. 76.

89. Where a defendant intends to set-off any debt or demand alleged to be due to him by the plaintiff, he shall give notice thereof in writing to the registrar of the Court, and deliver to him a statement of the particulars of such set-off, at least five clear days before the return-day.

9 & 10 Vict. c. 95, s. 76.

90. Where a defendant intends to rely on the defence of infancy, he shall give notice thereof in writing to the registrar of the Court, at least five clear days before the return-day, setting forth in such notice, so far as he is able, the place and date of his birth.

9 & 10 Vict. c. 95, s. 76.

91. Where a defendant intends to rely on the defence of coverture, she shall give notice thereof in writing to the registrar of the Court, at least five clear days before the return-day, setting forth in such notice, so far as she is able, the place and date of marriage, together with the Christian name and surname of her husband.

9 & 10 Vict. c. 95, s. 76.

92. Where a defendant intends to rely on the defence of any statute of limitations, he shall give notice thereof in writing to the registrar of the Court at least five clear days before the return-day.

9 & 10 Vict. c. 95, s. 76.

93. Where a defendant intends to rely on the defence of a discharge under any statute relating to bankrupts, or for the relief of insolvent debtors, he shall give notice thereof in writing to the registrar of the Court, at least five clear days before the return-day, setting forth in such notice the date of his certificate, discharge, or final

(*a*) See 'Manual of Practice and Evidence in the County Courts,' 3rd edit. p. 68.

order, and the Court by which such certificate, discharge, or final order was granted or made.

94. Where in any action for libel or slander the defendant relies as a defence upon the fact that the libel or slander is true, he shall give notice thereof in writing to the registrar at least five clear days before the return-day, setting forth in such notice that the libel or slander complained of is true in substance. 30 & 31 Vict. c. 142, s. 10.

95. Where a defendant intends to rely on an equitable defence, (*a*) he shall give notice thereof in writing to the registrar of the Court at least five clear days before the return-day, and shall therein state the fact, constituting such equitable defence.

96. When in any action of tort the defendant relies upon a statutory defence, he shall give notice thereof in writing to the registrar at least five clear days before the return-day, and shall mention the year, chapter, and section of the statute on which he relies.

97. In all cases mentioned in the last nine rules the party thereby required to give the notice shall, unless otherwise expressly ordered, at least five clear days before the return-day, deliver to the registrar of the Court as many copies thereof as there are opposite parties, and an additional copy to be filed; and the registrar shall, within twenty-four hours from the time of receiving the same, transmit, by post, one copy of such notice to each of the opposite parties.

98. Where the defence is a tender, such defence shall not be available unless, before or at the hearing of the cause, the defendant pays into Court (which may be without costs) the amount alleged to have been tendered.

99. The notice of intention to defend or to object to the jurisdiction of the Court, contained in Schedule (B) to 30 & 31 Vict. c. 142, may be given by sending the same by post, directed to the registrar of the Court from which the summons issued, provided the same be posted in such time as that by the usual course of post the same would be delivered at the registrar's office at least six clear days before the return-day.

Evidence.

100. Summonses to witnesses may be issued without leave of the Court, to be served either in the home or in any foreign district. 9 & 10 Vict. c. 95, s. 85.

(*a*) See *ante*, p. 78.

101. It shall be sufficient if a summons to a witness be served a reasonable time before the actual hearing.

102. Where either party proposes to give a judgment of a Superior Court or any other document, whether printed or written, in evidence, he may, by a demand in writing made a reasonable time before the return-day, require the other party to admit (saving all just exceptions to the admissibility of such document in evidence) the document to be read in evidence without proof; and if such demand be not made, no costs of proving such document shall be allowed, unless the judge shall otherwise order. If such demand be not complied with, and the judge think it reasonable that the admission should have been made, the party refusing shall bear the expense of proving such document whatever may be the event of the cause.

103. Where any documents are produced to the Court from proper custody, they shall be read without further proof, if they appear genuine, and if no objection be taken thereto; and if the admission of any document so produced be objected to, the judge may adjourn the hearing for the production (*a*) of the documents, and the party objecting shall pay the costs caused by such objection, in case the documents shall afterwards be proved, unless the judge shall otherwise order. (*b*)

(*a*) proof?

Jury.

9 & 10 Vict. c. 95, s. 70.

104. Notice of demand of a jury shall be made in writing to the registrar of the Court three clear days before the day of hearing, and the summonses to the the intended jurors shall be delivered to the bailiff forthwith.

9 & 10 Vict. c. 95, s. 70.

105. Where notice of a demand of a jury has not been given in due time, or if at the hearing both parties desire to try by a jury, the judge may, on such terms as he shall think fit, adjourn the cause in order that the necessary steps for such trial may be taken, and the trial shall take place accordingly.

9 & 10 Vict. c. 95, s. 73.

106. Cases of interpleader and of replevin and pro-

(*b*) This is a very extraordinary rule. It must be treated as confined to those documents to which the doctrine of "proper custody" applies. See 'Taylor on Evidence,' part 2, ch. 10.

As to documentary evidence in the County Courts, see 'Manual of Practice and Evidence in the County Courts,' pp. 198–215.

ceedings, in the nature of scire facias, may at the instance of either party, be tried by a jury.

107. The number of jurymen summoned to attend at a Court for the trial of causes shall be ten, unless the judge shall otherwise order. 9 & 10 Vict. c. 95, s. 72.

Adjournment of Cause.

108. The parties to any cause, at any time before the cause is called on, may, by consent and without payment of any hearing fee, postpone the hearing to such subsequent Court as the judge shall direct. 9 & 10 Vict. c. 95, s. 81.

109. Where a cause is adjourned, no order of adjournment shall be served on either party, unless by direction of the judge.

110. When anything required by the practice of the Court to be done by either party, before or during the hearing, has not been done, the judge may, in his discretion, and on such terms as he shall think fit, adjourn the hearing to enable the party to comply with the practice.

Hearing.

111. If at the return-day, or at any adjournment of the Court at which it is returnable, the plaintiff does not appear, and the defendant does appear and does not admit the plaintiff's demand, the judge may, in his discretion, award to the defendant costs, in the same manner, and to the same amount, as to counsel, attorney, witnesses, and other matters, as if the cause had been tried, but no hearing fee shall be charged. 13 & 14 Vict. c. 61, s. 10.

112. Where a plaint has been entered under section 2 of 30 & 31 Vict. c. 142, and neither the plaintiff nor defendant appear at the hearing, the cause shall not be struck out until after the expiration of two calendar months from the return-day.

113. No attorney shall be allowed to appear for any person in a County Court until he has signed a roll or book to be kept by the registrar for that purpose, but no fee shall be payable for that purpose, and he shall, once in every year, if required by the registrar, produce his certificate for the year to the registrar, who shall note the fact on the roll. 15 & 16 Vict. c. 54, s. 10.

114. It shall not be necessary for either party, previous to the hearing, to give notice to the other, or to the Court, of his intention to employ a barrister or

attorney to act as his advocate at the hearing, and the allowance of costs for such barrister or attorney shall not be affected by such want of notice.

15 & 16 Vict. c. 54, s. 10.

115. The provisions of 15 & 16 Vict. c. 54, section 10, as to the persons who shall be allowed to appear for any party in any proceeding in the County Courts, shall apply to all proceedings in bankruptcy, and to all other matters which may come before the Court. (*a*)

116. Where an infant defendant appears at the hearing, and names a person willing to act as guardian, and who then assents so to act, such person shall be appointed guardian accordingly; but if the defendant do not name a guardian, the judge may appoint any person in Court willing to become guardian, or in default of such person the judge shall appoint the registrar of the Court to be guardian, and the cause shall proceed thereupon as if another person had been appointed guardian, and the name of the guardian appointed shall be entered in the form in the Schedule, and no responsibility shall attach to the person so appointed guardian at the instance of the Court.

9 & 10 Vict. c. 95, s. 68.

117. Where a plaintiff avails himself of the provisions of section 68 of 9 & 10 Vict. c. 95, (*b*) and proceeds against only one or more of several persons jointly answerable, the defendant or defendant sued may avail himself or themselves of any set-off or other defence to which he or they would be entitled if all the persons answerable were made defendants.

118. When at the hearing of any plaint, it shall appear that an action for the same cause is pending in any other Court of Record, the judge shall order the plaint to be struck out unless the plaintiff shall undertake to discontinue the action in such other Court, before a day

(*a*) The section referred to enacts that "it shall be lawful for the party to the suit or other proceeding, or for an attorney of one of Her Majesty's superior Courts of Record, being an attorney acting generally in the action for such party, but not an attorney retained as an advocate by such first-mentioned attorney, or for a barrister retained by or on behalf of the party on either side; but without any right of exclusive or pre-audience, or by leave of the judge, for any other person allowed by the judge to appear instead of the party to address the Court, but subject to such regulations as the judge may from time to time prescribe for the orderly transaction of the business of the Court."

(*b*) See third edition of 'Practice and Evidence in the County Courts,' p. 39.

to be named, to which the hearing shall be adjourned and unless before such adjourned hearing such action shall have been discontinued, the plaint shall then be struck out.

Amendment. (*a*)

119. Where a person other than the defendant appears at the hearing, and admits that he is the person whom the plaintiff intended to charge, his name may be substituted for that of the defendant, if the plaintiff consents, and thereupon the cause shall proceed, as to set-off and other matters, as if such person had been originally named in the summons, and the costs of the person originally named as the defendant shall be in the discretion of the judge. 19 & 20 Vict. c. 108, s. 57.

120. Where a party sues or is sued in a representative character, but at the hearing it appears that he ought to have sued or been sued in his own right, the judge may, at the instance of either party, and on such terms as he shall think fit, amend the proceedings accordingly, and thereupon the cause shall proceed, as to set-off and other matters, as if the proper description of the party had been given in the summons.

121. Where a party sues or is sued in his own right, but at the hearing it appears that he ought to have sued or been sued in a representative character, the judge may, at the instance of either party, and on such terms as he shall think fit, amend the proceedings accordingly, and thereupon the cause shall proceed, as to set-off and other matters, as if the proper description of the party had been given in the summons.

122. Where the name or description of a *plaintiff* in the summons is insufficient or incorrect, it may at the hearing be amended at the instance of either party by order of the judge, on such terms as he shall think fit, and thereupon the cause shall proceed, as to set-off and other matters, as if the name or description had been originally such as it appears after the amendment has been made.

123. Where the name or description of a *defendant* in the summons is insufficient or incorrect, and the defendant appears and objects to the description, it may at the hearing be amended at the instance of either party by order of the judge, on such terms as he shall

(*a*) See third edition of 'Practice and Evidence in the County Courts,' pp. 110–113.

think fit, and thereupon the cause shall proceed, as to set-off and other matters, as if the name or description had been originally such as it appears after the amendment had been made; but if no objection is taken to the name or description the cause may proceed, and in the jndgment, and all subsequent proceedings, founded thereon, the defendant may be named and described in the same manner.

124. In actions by or against a husband, if a wife be improperly joined or omitted as a party, the summons may at the hearing be amended at the instance of either party by order of the judge, on such terms as he shall think fit, and thereupon the cause shall proceed, as to set-off and other matters, as if the proper person had been made party to the suit.

125. Where it appears at the hearing that a *greater* number of persons have been made *plaintiffs* than by law required, the name of the person improperly joined may, at the instance of either party, be struck out by order of the judge on such terms as he shall think fit, and thereupon the cause shall proceed, as to set-off and other matters, as if the proper party or parties had alone been made plaintiffs.

126. Where it appears at the hearing that a *less* number of persons have been made *plaintiffs* than by law required, the name of the omitted person may, at the instance of either party, be added, by order of the judge, on such terms as he shall think fit, and thereupon the cause shall proceed, as to set-off and other matters, as if the proper persons had been originally made parties; and if such person shall, either at the hearing or at some adjournment thereof, personally or by writing, signed by him or his agent, consent to become a plaintiff in manner aforesaid, the judge shall then pronounce judgment as if such person had originally been made a plaintiff; but if such person shall not consent to become a plaintiff in manner aforesaid, either at the hearing or at the adjournment thereof, judgment of nonsuit shall be entered.

127. Where it appears at the hearing that a *greater* number of persons have been made *defendants* than by law required, the name of the person improperly joined may, at the instance of either party, be struck out by order of the judge, on such terms as he shall think fit, and thereupon the cause shall proceed, as to set-off and

other matters, as if the proper party or parties had alone been made defendants, and the cost of the person improperly joined as a defendant shall be in the discretion of the judge.

128. Where two or more persons are made defendants, and some of them have not been served, the name or names of the defendant or defendants who have not been served, may, at the instance of either party, be struck out by order of the judge, on such terms as he shall think fit; and thereupon the cause shall proceed, as to set-off and other matters, as if the party or parties whose name or names have not been struck out, had alone been made defendant or defendants.

Costs.

129. In all cases where a plaintiff claims a sum exceeding £20 and recovers a sum not exceeding £20 but exceeding £5, the scale upon which the costs shall be taxed shall be in the discretion of the Court. (*a*)

130. The judge shall in each case direct what number of witnesses are to be allowed on taxation of costs, between party and party, and their allowance for attendance shall in no case exceed the highest rate of the allowances mentioned in the scale in the schedule. 9 & 19 Vict. c. 95, s. 88.

131. In taxing the costs incurred in the superior Court previous to the transmission of the cause to the County Court under section 7 or 10 of the 30 & 31 Vict. c. 142, the registrar shall tax the same according to the scale of costs and fees in use in such superior Court, the schedules of which are annexed to these Rules. (*b*)

132. The costs of witnesses, whether they have been examined or not, may, in the discretion of the judge, be allowed, though they have not been summoned. 9 & 10 Vict. c. 95, ss. 83, 85.

133. Money paid into Court on a judgment shall be appropriated first in satisfaction of the costs, and afterwards in satisfaction of the original demand.

134. Costs of warrants against the goods, whether executed or unexecuted or unproductive, shall be allowed against the defendant, unless the judge shall otherwise direct. 9 & 10 Vict. c. 95, s. 94.

135. On the hearing of a judgment summons, where a warrant against the goods has been issued, the costs

(*a*) See *ante*, pp. 61, 62. (*b*) See *ante*, p. 36.

of such warrant shall not be allowed as against the judgment debtor, unless the judge be satisfied that there was a reasonable cause for issuing the warrant.

136. The costs of a judgment summons shall not be allowed against the judgment debtor, unless some order shall have been made thereon; but where an order is made on a judgment summons the judge may, in his discretion, allow the costs, as against the judgment debtor, of any previous judgment summonses which have not been served through the judgment debtor having evaded service.

9 & 10 Vict. c. 95, s. 102.

137. Costs of warrants of commitment, whether executed or unexecuted, shall be allowed against the defendant, unless the judge shall otherwise direct.

9 & 10 Vict. c. 95, s. 106.

138. No possession fee shall be payable where an execution is paid out at the time of the levy; but if the officer shall necessarily remain in possession more than half an hour, and the execution shall be paid out on the day of levy, the possession fee for that day shall be charged.

9 & 10 Vict. c. 95, s. 106.

139. No appraisement is to be made until the fifth day of the bailiff's holding possession of the goods under an execution, unless where the goods are of a perishable nature, or are sold at the request of the party, before the expiration of four days, or unless the goods are removed.

Orders.

140. Orders for payment of money or costs, or both, and orders of adjournment, when directed to be served, shall in all cases be prepared by the registrar of the home Court, and delivered to the bailiff, who shall send them by post or otherwise to the parties on whom they are respectively directed to be served: Provided always, that it shall not be necessary for the party in whose favour any order has been made to prove, previously to his taking proceedings thereon, that it was posted or reached the opposite party.

141. Where the Court gives leave to take any proceeding, it shall not be necessary to draw up any order, nor shall any order be drawn up to warrant such proceeding.

Instalments, Payment by.

142. When an order is made for the payment of any sum of money by instalments, such instalments shall be

payable at such periods as the judge shall order; and if no period be mentioned, the first shall become due on the twenty-eighth day from the day of making the order, and every successive instalment shall become due at a like period of twenty-eight days from the day of the previous instalments becoming due; and such instalments shall be paid into Court in accordance with s. 45 of 19 & 20 Vict. c. 108. (*a*)

143. When an order is made for payment by instalments or otherwise, the registrar shall give notice to the plaintiff by post in the form set forth in the Schedule, of every payment made: Provided that such notice shall not be given where the instalment does not exceed ten shillings.

Proceeding on a Judgment more than Six Years old.

144. No warrant against the goods, or judgment summons, shall issue on a judgment more than six years old, unless some payment has been made into Court under such judgment within twelve calendar months previously, or unless by leave of the judge, if he is satisfied that the judgment creditor has used all due diligence; but no notice to the defendant, previous to applying for such leave, shall be necessary, and such leave shall be expressed on the warrant or summons under the seal of the Court.

Attachment of Debts. (*b*)

145. Where a plaintiff is desirous that the defendant, if the defendant shall have judgment given against him, shall be orally examined, forthwith after the judgment shall have been given, as to what debts are due and owing to him, the plaintiff shall, before the cause is called on, lodge with the registrar a statement in writing of the name, address, and description of the person or persons within the ordinary jurisdiction of the Court whom he considers are debtors to the defendant. 'Common Law Procedure Act, 1854,' s. 60.

146. Where such a statement has been lodged by a plaintiff, the defendant, if he shall have had judgment given against him, may be examined before the Court at the request of the plaintiff as to any debts due and owing, or accruing from any person mentioned in the statement to the defendant, and if such person be then

(*a*) See 'County Court Practice and Evidence,' third edition, p. 115.

(*b*) See *ante*, p. 74.

present, he may be required forthwith to show cause why he should not be ordered to pay into Court, for the benefit of the judgment creditor, such debts or so much thereof as will satisfy the judgment debt, and the Court may make an order for the payment of such debts, or so much thereof as will satisfy the judgment debt, and such order shall be entered in the minute-book, and may be enforced in like manner as any order made in any suit in the Court; and where the garnishee pays the money as ordered, he shall not be liable for any costs; and an entry of the payment shall be made in the 'Cash Book' and 'Ledger.'

147. Where a plaintiff has not lodged such statement, he may, at any time after the judgment, upon lodging with the registrar of the Court in which the judgment was given an affidavit stating the fact of the judgment, and of its being unsatisfied, and that a third person (hereinafter called the garnishee) is indebted to the judgment debtor, and is resident within the district of the Court, enter a plaint in the nature of a *scire facias* for the amount of the debts due to the judgment debtor from the garnishee.

148. The summons on the plaint shall be personally served on the garnishee, and when so served it shall attach in the hands of the garnishee all debts due, owing, or accruing from him to the judgment debtor.

149. Where the garnishee shall pay the money into Court five clear days before the return-day, he shall not not be liable for any costs incurred by the judgment creditor.

150. Upon the return-day the Court shall determine as to the liability of the garnishee, and as to the party by whom the costs of the proceeding by plaint shall be paid, and make an order or orders in accordance with such determination.

Warrants of Execution against the Goods.

9 & 10 Vict. c. 95, ss. 94, 95.

151. Warrants of execution against the goods shall bear date on the day on which they are issued, and shall continue in force for twelve calendar months from such date, and no longer.

9 & 10 Vict. c. 95, ss. 94, 95.

152. Where a defendant has made default in payment of the whole amount awarded by the judgment, or of an instalment thereof, a warrant of execution, without leave of the Court, may issue against his goods; and such

execution shall be for the whole amount of the judgment and costs then remaining unsatisfied, unless in the case of instalments, the judge shall otherwise specially direct in each case at the time of giving judgment.

153. The registrar shall, on issuing a warrant of execution against the goods, indorse on such warrant the amount to be levied, distinguishing the amount adjudged to be paid, and the amount of the fee for issuing the warrant; and shall prepare and deliver to the bailiff with the warrant a notice in the form contained in the Schedule; and the bailiff, upon levying, shall deliver such notice to the party against whom the execution has issued, or leave the same at the place where the execution is levied. 9 & 10 Vict. c. 95, s. 94.

154. Warrants of execution against the goods may be issued concurrently into one or more districts, provided that the costs of more than one warrant shall not be allowed against the execution debtor, unless by order of the judge.

Judgment Summons. (*a*)

155. When an application is made by a judgment creditor for the issue of a judgment summons the applicant shall be asked to state the ground or grounds upon which he relies to obtain the committal of the judgment debtor, and after the registrar shall have struck from the form of application for the summons in the Schedule hereunto annexed all the grounds therein mentioned, upon which the applicant does not rely, the form shall be handed to the applicant, and he shall be required to read and sign the same; and where the ground relied on is not that the judgment debtor has had since the judgment the means and ability to satisfy the judgment, then the undertaking in reference to such ground shall be struck out.

156. Every judgment summons shall be issued ten clear days at least before the day on which the judgment debtor is required to appear to it, unless the person entering the summons shall at the time of issuing it inform the registrar that the plaintiff will be prepared at the hearing to prove one of the facts mentioned in the following rule, as grounds for short service.

157. A judgment summons may issue at any time, without leave of the Court, except in cases provided for 9 & 10 Vict. c. 95, s. 98. 19 & 20 Vict. c. 108, ss. 48, 61.

(*a*) See 'Practice and Evidence,' 3rd edit. p. 141–144.

either by sect. 48 of 19 & 20 Vict. c. 108, or by Rule 144, and shall be forthwith delivered by the registrar to the bailiff, and shall be served personally not less than five clear days before the day on which the party is required to appear to such summons, unless at the hearing the judge is satisfied, on the evidence on oath before him, that such party was about to remove from his dwelling or place of business, or was keeping out of way to avoid service, in either of which cases service upon the party at any time before the time appointed for the appearance of such party shall be sufficient, but no successive summons shall be issued.

158. The hearing of judgment summonses may be adjourned from time to time.

159. Upon the issue of a judgment summons against a party the bailiff shall return into Court any warrant of execution against the goods of such party which may have been issued upon a judgment in the cause.

9 & 10 Vict. c. 95, s. 100.

160. Where a judgment summons is heard in a Court other than that in which judgment was obtained, and the order of such last-mentioned Court is altered by the judge of the Court in which the judgment summons is heard, all payments under such order shall be made into, and execution thereupon against the goods shall be issued by, the Court which alters the order.

161. Where a certified copy of a judgment is obtained, the registrar shall make on the minute of the judgment a memorandum of having given such certificate, and no warrant of execution against the goods or judgment summons shall issue upon such judgment from the Court in which the judgment was obtained, unless it be shown to the satisfaction of the Court or registrar that no order has been made against the execution debtor in any other Court.

Commitment. (*a*)

9 & 10 Vict. c. 95, s. 101.

162. When a defendant does not dwell or carry on business in the district of the Court to which he has been summoned to appear to a plaint, he shall not be liable at the hearing of such summons to be committed under sect. 101 of 9 & 13 Vict. c. 95, whether he appears to such summons or not.

9 & 10 Vict. c. 95, ss. 99. 101.

163. In cases of commitment under sections 99, or

(*a*) See 'The County Court Practice and Evidence,' third edit. pp. 145–150.

101 of the 9 & 10 Vict. c. 95, the amount of the judgment, and all costs payable by the defendant, shall be indorsed on the warrant.

164. When a warrant of commitment for non-payment of money is issued, the defendant may, at any time before his body is delivered into the custody of the gaoler, pay to the bailiff the amount indorsed on the warrant as that, on the payment of which, he may be discharged; and on receiving such amount the bailiff shall discharge the defendant, and shall within twenty-four hours after receiving such amount pay over the same to the registrar. 9 & 10 Vict. c. 95, s. 102.

165. Where a person is imprisoned under a warrant transmitted under the provisions of section 104 of 9 & 10 Vict. c. 95, he may, where the home Court is at an inconvenient distance from the prison, pay into the foreign Court the amount indorsed on the warrant as that on the payment of which he may be discharged, and he shall be discharged out of custody upon a certificate of such payment, signed by the registrar of the foreign Court.

166. Where a person is imprisoned under a warrant of a County Court, and the home Court or the home and foreign Court is or are at an inconvenient distance from the prison, the gaoler may discharge him out of his custody, if he shall see fit, upon payment to him by the prisoner of the total amount indorsed on the warrant as that on the payment of which he may be discharged, with a sum sufficient for transmission by the gaoler of such amount by post-office order to the registrar of the home Court.

167. In all cases of commitment for non-payment it should be made part of the order of commitment that on the production of a certificate, signed by the registrar, stating that payment or satisfaction of the sum or of the instalment thereof and costs remaining due at the time of making the order for commitment, together with all subsequent costs, has been made, the defendant shall be discharged out of custody, without further leave of the judge. 9 & 10 Vict. c. 95, s. 110.

168. Warrants of commitment against the same party may be issued concurrently into one or more districts; provided that the costs of more than one warrant shall not be allowed against such party, unless by order of the judge.

Transmission of Process and Proceeds of Warrants to and from Foreign Districts.

9 & 10 Vict. c. 95, s. 104.

169. In all cases of warrants, whether against the goods or the person, to be executed in a foreign district, the registrar of the foreign Court shall immediately on the receipt of the warrant enter it in 'The Foreign Executions Re-issued Book.'

9 & 10 Vict. c. 95, s. 104.

170. Where, by virtue of any warrant sent to a foreign district, any money shall have been received by the bailiff of the foreign Court, such bailiff shall, within twenty-four hours from the receiving of such money, pay over the same to the registrar of the foreign Court, and shall, unless an interpleader summons as to such money be pending, make a return in writing of the amount received; and in the case of a levy having been made, the bailiff shall state in the return the gross amount produced by such levy, the particulars of the appraiser's and broker's charges, and the fees allowed for keeping possession, and pay over to the registrar of the foreign Court the amount levied, less such charges and fees; and the registrar of the foreign Court shall certify in the said return the amount paid into Court, and the correctness of the said charges, and shall account for and pay over such amount to the treasurer of his Court at such time as the treasurer shall require; and the high bailiff shall thereupon transmit such return to the high bailiff of the home Court, as directed by s. 104 of 9 & 10 Vict. c. 95, and such latter bailiff shall, within twenty-four hours from the receipt of such return, deliver the same to the registrar of his Court, who shall thereupon pay out of any money in his hands, to the plaintiff in the cause, the amount certified in such return to have been received by the registrar of the foreign Court, as the proceeds of the execution, and shall enter in a book the amount so certified in the form set forth in the schedule, and the registrar of the home Court shall file such return, and the registrar shall be allowed by the treasurer of his Court at his audit, the amount so paid.

9 & 10 Vict. c. 95, s. 106.

171. Where by virtue of any warrant against the person to be executed in a foreign district any money shall be paid into Court under rule 165, the registrar shall transmit a certificate to the registrar of the home Court of the amount so paid in, and shall account for and pay over the amount to the treasurer of his Court at

such time as the treasurer shall require; and the registrar of the home Court shall upon the receipt of the certificate pay out of any money in his hands to the judgment creditor the amount so certified to have been received by the registrar of the foreign Court, and shall enter the same in the book mentioned in the last rule, and shall file the certificate, and he shall be allowed by the treasurer of his Court, at his audit, the amount so paid.

New Trial. (*a*)

172. An application for a new trial, or to set aside proceedings, may be made and determined on the day of hearing, if both parties be present, or such application may be made at the first Court holden next after the expiration of twelve clear days from such day of hearing; provided the intending applicant do, seven clear days before the holding of such Court, deliver to the registrar at his office, and also give to the opposite party by serving the same personally on such party, or by leaving the same at his place of abode or place of business, a notice in writing, signed by himself, his attorney or agent, stating that such an application is intended to be made at such Court, and setting forth shortly the grounds of such intended application; but such notice shall not operate as a stay of proceedings unless the judge shall otherwise order, and if any money paid into Court under any execution or order in the suit shall not have been paid out, when such notice in writing shall be given to the registrar, the registrar shall retain the same to abide the event of such application, or until the judge shall otherwise order; and if no such application be made, the money shall, if required, be paid over to the party in whose favour the order was made, unless the judge shall otherwise order; and if such notice be not given in manner aforesaid, or such application be not made at the Court mentioned in the notice, no application for a new trial or to set aside proceedings shall be subsequently made, unless by leave of the judge, and on such terms as he shall think fit; provided that this rule shall not apply to cases falling within the provision of s. 80 of 9 & 10 Vict. c. 95. 9 & 10 Vict. c. 95, s. 80.

173. The judge may, in his discretion, make it a condition of granting a new trial, that it shall take place before a jury, although the former trial did not take place before a jury.

(*a*) See 'Practice and Evidence in the County Courts,' third edit., part i., chapter viii.

Interpleader. (*a*)

9 & 10 Vict. c. 95, s. 118, and 19 & 20 Vict. c. 108, s. 72.

174. Where any claim is made to or in respect of any goods or chattels taken in execution under the process of any County Court, or in respect of the proceeds or value thereof, and summonses have been issued on the application of the bailiff, such summonses shall be served in such time and mode as hereinbefore directed for a summons to appear to a plaint, and the case shall proceed as if the claimant were the plaintiff, and the execution creditor the defendant; and the claimant shall, five clear days before the return-day, deliver to the bailiff, or leave at the office of the registrar of the Court, a particular of any goods or chattels alleged to be the property of the claimant, and the grounds of his claim, or in case of a claim for rent of the amount thereof, and for what period, and in respect of what premises, the same is claimed to be due, and the name, address, and description of the claimant shall be fully set forth in such particular, and any money paid into Court under the execution shall be retained by the registrar until the claim shall have been adjudicated upon. Provided that by consent, an interpleader claim may be tried, although this rule has not been complied with.

30 & 31 Vict. c. 142, s. 31.

175. Where the claimant to goods taken in execution claims damages from the execution creditor or from the high bailiff for or in respect to the seizure of the goods, he shall in the particulars of his claim to the goods state the amount he claims for damages, and the grounds upon which he claims damages.

30 & 31 Vict. c. 142, s. 31.

176. Where an execution creditor claims damages against a high bailiff arising out of the execution of any process, he shall deliver to the high bailiff a notice of such claim, stating the grounds for, and amount of, such claim.

177. Where a claim for damages under section 31 of 30 & 31 Vict. c. 142 is made against any high bailiff and execution creditor, or either of them, they or either of them may pay into Court money in full satisfaction of such claim for damages, and such payment into Court shall be made in the same manner and have the same effect, and the parties respectively shall have the same rights and remedies, as by the practice of County Courts they would respectively have if the proceeding had been

(*a*) See 'Practice and Evidence in the County Courts,' third edit., part i., chapter xi.

an action in which the claimant was plaintiff, and the high bailiff and judgment creditor defendants.

178. Interpleader summonses shall be issued by the registrar, on the application of the bailiff, without leave of the Court.

179. Interpleader summonses shall be issued from the Court of the district in which the levy was made, and the execution creditor and claimant shall be summoned to such Court.

180. Where the claim to any goods or chattels taken in execution, or the proceeds or value thereof, shall be decided against the claimant, the costs of the bailiff allowed by the judge shall be retained by him out of the amount levied, if the judge shall so order, but without prejudice to the right of the execution creditor against the claimant for the sum so retained.

Security.

181. In all cases where a party proposes to give a bond by way of security, he shall serve, by post or otherwise, on the opposite party and the registrar, at his office, notice of the proposed sureties in the form set forth in the schedule, and the registrar shall forthwith give notice to both parties of the day and hour on which he proposes that the bond shall be executed, and shall state in the notice to the obligee, that should he have any valid objection to make to the sureties, or either of them, that it must then be made. 19 & 20 Vict. c. 108, ss. 70, 71.

182. The sureties shall make an affidavit of their sufficiency before the registrar in the form in the schedule, unless the opposite party shall dispense with such affidavit.

183. The bond shall be executed in the presence of the judge or registrar, or some other of the persons mentioned in section 58 of 19 & 20 Vict. c. 108 (*a*). Provided always, that if it be executed in the presence of the judge or registrar, it shall not be necessary for it to be attested. 19 & 20 Vict. c. 108, s. 58.

184. Where a party makes a deposit of money in lieu of giving a bond he shall forthwith give notice to the opposite party, by post or otherwise, of such deposit having been made.

(*a*) That is to say, a Commissioner to administer oaths in Chancery in England, or a London Commissioner to administer oaths in Chancery, or a Commissioner for taking affidavits in any superior Court, or before a justice of the peace.

185. In all cases where the security is by bond, the bond shall be deposited with the registrar until the cause be finally disposed of.

Appeal. (*a*)

13 & 14 Vict. c. 61, s. 14; 19 & 20 Vict. c. 108, s. 68.

186. Any party dissatisfied with the determination or direction of the Court in point of law, or upon the admission or rejection of evidence, may, before the rising of the Court on the day on which judgment was pronounced, deliver to the registrar a statement in writing, signed by him, his counsel or attorney, containing the grounds of his dissatisfaction; and in the event of no such statement being delivered, the successful party may proceed on the judgment unless the judge shall otherwise order; but the judge may direct proceedings to be taken on the judgment notwithstanding such statement has been delivered. Provided that the party so dissatisfied may appeal on grounds different from those contained in such statement, and although he shall not have delivered any such statement.

187. The ten days within which notice of appeal may be given shall be reckoned exclusive of the day of trial.

188. The notice of appeal shall be in writing, and shall state the grounds on which the party appeals, and shall be signed by the appellant, his attorney or agent, and such notice shall be sent to the registrar as well as to the successful party, by post or otherwise.

189. If, before the notice of appeal is served upon the registrar, execution shall have issued, and the amount of the judgment and costs of execution shall have been paid into the hands of the bailiff, or levied and not paid over to the successful party, the same shall remain in Court to abide the order of the Court.

190. If, before an appealing party shall have given the required security, execution shall have issued, the registrar shall, upon the appealing party giving security, forthwith send notice thereof, by post or otherwise, to the bailiff, and proceedings on such execution shall forthwith be stayed.

191. At the time of giving security the appellant shall deliver to the registrar a statement in writing showing to which of the Courts of Common Law at Westminster he proposes to appeal.

(*a*) See 'County Court Practice and Evidence,' third edit. pp. 124–129.

192. All cases on appeal shall, unless the judge shall otherwise order, be presented to him for signature, at the Court holden next after the expiration of twelve clear days from the day on which judgment was pronounced, and shall then be signed by the judge, and be sealed with the seal of the Court; and when signed and sealed, one copy thereof shall be deposited with the registrar, and another sent, by post or otherwise, by the appellant, to the successful party, within three clear days next after the time of signing and sealing the same; and if the appellant do not comply with this rule, the successful party may proceed on the judgment, unless the judge shall otherwise order. 13 & 14 Vict. c. 61, s. 15.

193. The appellant shall, within three clear days next after the case is signed and sealed, transmit two copies thereof, by post or otherwise, in conformity with the provisions of sections 15 of 13 & 14 Vict. c. 61; and notice of such transmission shall forthwith be served by the appellant on the successful party, by post or otherwise; in default whereof the successful party may proceed on the judgment, and shall, on application to the Court, be entitled to such costs as he shall have incurred in consequence of the appellant's proceedings. Provided that instead of proceeding on such judgment, the respondent, if he think fit, may, within twenty-eight clear days from the signing of the case, transmit it in the manner prescribed, and give the like notice to the appellant of such transmission. 13 & 14 Vict. c. 61, s. 15.

194. If, after the case has been transmitted, the appellant do not prosecute his appeal with due diligence, according to the practice of the Court of Appeal, the successful party may apply to the judge for leave to proceed on the judgment, and leave for that purpose may be granted accordingly, if the judge shall think fit; and the successful party shall also be entitled to such costs as he shall have incurred in consequence of the appellant's proceedings; which costs shall be added to the judgment.

195. When the Court of Appeal has pronounced judgment, either party may deposit the original order of the Court of Appeal, or an office copy thereof, with the registrar of the County Court, and within forty-eight hours from the time of such deposit send a notice thereof to the other party, by post or otherwise.

196. A new trial, in pursuance of the order of the

Court of Appeal, shall be entered for trial at the County Court which shall be holden next after twelve clear days from the time when such order or office copy thereof shall have been deposited as aforesaid, unless the parties agree that it shall take place sooner, or the judge otherwise order, and it shall be conducted in the same manner as any new trial granted by the County Court itself.

197. If the order of the Court of Appeal be that judgment shall be entered for either party, then such judgment shall be entered accordingly, and the successful party shall be at liberty to proceed on such judgment as on a judgment of the County Court.

Abatement of Action.

198. Where one or more of *several* plaintiffs or defendants shall die *before* judgment the suit shall not abate, if the cause of action survive to or against the surviving parties respectively.

199. Where one or more of *several* plaintiffs or dedefendants shall die *after* judgment, proceedings thereon may be taken by the survivors or survivor, or against the survivors or survivor, without leave of the Court.

200. Where a married woman is sued as a feme sole, and she obtains judgment on the ground of coverture, proceedings may be taken thereon, in the name of the wife, at the instance of the husband, without leave of the Court.

Execution by Person not a Party to Suit.

201. Execution on a judgment may issue on behalf of any person not a party to the suit by leave of the registrar, upon proof of title to the benefit of the judgment, and upon substitution of the name of the new plaintiff, together with a statement of his derivative title for that of the original plaintiff, and the registrar shall give notice of such substitution to the defendant by post, and execution shall not issue upon the judgment until the expiration of six clear days after the posting of the notice.

Proceedings in the nature of Scire Facias. (*a*)

202. Execution on a judgment shall not issue against

(*a*) See 'Practice and Evidence in the County Courts,' third edition, p. 150.

any person not a party to the suit, without a plaint and summons upon the judgment, the proceedings in which shall be the same as in ordinary cases.

203. Where a judgment has been given against a person deceased, his executors or administrators may in the same manner be sued upon the judgment.

Proceedings by and against Executors and Administrators.

204. In actions by executors or administrators, if the plaintiff fail, the costs shall, unless the Court shall otherwise order, be awarded in favour of the defendant, and shall be levied *de bonis propriis.* 9 & 10 Vict c. 95, s. 66.

205. Where an executor or administrator, plaintiff or defendant, shall not appear on the day of hearing, the provisions of ss. 79 & 80 of 9 & 10 Vict. c. 95, and of s. 10 of 13 & 14 Vict. c. 61, shall apply respectively, subject to the rules applicable to executors or administrators suing or sued.

206. A party suing an executor or administrator may charge in the summons, that the defendant has had assets, and has wasted them.

207. In all cases where the defendant is so charged in the summons, if the Court shall be of opinion that the defendant has wasted the assets, the judgment shall be, that the debt or damage and costs shall be levied *de bonis testatoris, si,* etc., *et si non, de bonis propriis;* and the non-payment of the amount of the demand immediately on the Court finding such demand to be correct, and that the defendant is chargeable in respect of assets, shall be conclusive evidence of wasting to the amount with which he is so chargeable.

208. Where a defendant, sued as an executor or administrator, does not appear, or where the defendant appearing denies his representative character, or alleges a release to himself of the demand, whether he insists on any other ground of defence or not, if the judgment of the Court be in favour of the plaintiff, the judgment shall be that the amount found to be due and costs shall be levied *de bonis testatoris, si,* etc., *et si non, de bonis propriis.*

209. Where a defendant sued as an executor or administrator admits his representative character, and only denies the demand, if the plaintiff prove it, the

judgment shall be that the demand and costs shall be levied *de bonis testatoris, si,* etc., *et si non* as to the c sts, *de bonis propriis.*

210. Where such defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves the administration alleged, the judgment shall be to levy the costs of proving the demand *de bonis testatoris si,* etc., *et si non, de bonis propriis ;* and as to the whole or residue of the demand, judgment of assets, *quando acciderint ;* and the plaintiff shall pay the defendant's costs of proving the administration of assets.

211. Where such defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, but the defendant does *not* prove the administration alleged, the judgment shall be to levy the amount of the demand, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris si,* etc., *et si non,* as to the costs, *de bonis propriis,* and as to the residue of the demand, if any, judgment of assets, *quando acciderint.*

212. Where such defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of the assets, and proves the administration alleged, the judgment shall be for assets *quando acciderint,* and the plaintiff shall pay the defendant's costs of proving the administration of assets.

213. Where such defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of the assets, but does *not* prove the administration alleged, and has not established any other ground of defence, the judgment shall be to levy the amount of the demand, if so much assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them, and costs, *de bonis testatoris, si,* etc., *et si non,* as to the costs, *de bonis propriis,* and as to the residue of the demand, if any judgment of assets, *quando acciderint.*

214. Where judgment has been given against an executor or administrator, that the amount be levied upon assets of the deceased *quando acciderint,* the plaintiff or his personal representative may issue a sum-

mons in the form set forth in the schedule, and if it shall appear that assets have come to the hands of the executor or administrator since the judgment, the Court may order that the debt, damages, and costs be levied *de bonis testatoris, si,* etc., *et si non,* as to the costs, *de bonis propriis ;* provided, that it shall be competent for the party applying to charge in the summons that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as in rule 206, and the provision of rule 207 shall apply to such inquiry ; and the Courts may, if it appear that the party charged has wasted the assets, direct a levy to be made as to the debt and costs, *de bonis testatoris, si,* etc., *et si non, de bonis propriis.* .

215. Where a defendant admits his representative character, and the plaintiff's demand, and that he is chargeable with any sum in respect of assets, he shall pay such sum into Court, subject to the rules relating to payment into Court in other cases.

216. In actions against executors or administrators for which provision is not hereinbefore specially made, if the defendant fail as to any of his defences, the judgments shall be for the plaintiff as to his costs of disproving such defence, and such costs shall be levied *de bonis testatoris, si,* etc., *et si non, de bonis propriis.*

Notices.

217. Where by these rules any party is required to give notice according to a form mentioned in the schedule, it shall be sufficient if the notice given complies substantially with such form.

218. In all cases where anything is required by the rules of practice to be done within a period of twenty-four hours, or within a period of forty-eight hours, no part of Sunday, Christmas Day, Good Friday, the Saturday next after Good Friday, or of any day appointed by royal proclamation for a public fast, humiliation, or thanksgiving, or any day on which the offices of the Courts shall be closed by order of the Lord Chancellor, shall be included in the computation of such period.

219. All letters or process sent by post by or to the officers of the Courts, or by or to parties in a casuse, hall be prepaid.

Statutes of Limitation. (*a*)

220. Successive summonses may be issued without leave of the Court for the purpose of preventing the operation of any statute whereby the time for the commencement of any action is or may be limited, and the first and each subsequent summons shall be in force for twelve calendar months from the time of issuing the same, including the day of such issuing, and such subsequent summons shall be issued before the expiration of the previous summons, and entered in the plaint book of the Court: Provided that on entering the plaint in the first instance the usual fee shall be paid; but for such subsequent summonses no further fee shall be paid, nor shall it be necessary that any attempt be made to serve the first summons or any successive summonses, unless the plaintiff require the same; and such successive summonses shall be a continuance of the action on and from the day on which the first summons was issued.

221. Where a summons has been served in due time to prevent the operation of a statute of limitations, and either party dies after such service and after the lapse of the period within which it is provided that an action may be brought, proceedings may be taken by or against the surviving party, or by or against the personal representative of the deceased party, within one year from the day of holding the Court at which the summons required the defendant to appear.

Arbitration.

9 & 10 Vict. c. 95, s. 76.

222. Where a plaint is entered, the judge may, with the consent of the parties, as well in cases within the ordinary jurisdiction of the Court as in cases of agreement under s. 23 of 19 & 20 Vict. c. 108, make an order for a reference, under the provisions of s. 77 of 9 & 10 Vict. c. 95, before, upon, or after the return-day; and all the provisions in the last-mentioned Act contained as to references shall apply to a reference proceeding under such an order; provided that the same fees shall be paid paid as would have been payable on the hearing of the cause.

Ejectment. (*b*)

30 & 31 Vict. c. 142, s. 11.

223. Every action of ejectment shall be commenced

(*a*) See 'Manual of Practice and Evidence in the County Courts,' third edition, pp. 61, 289–303, etc.

(*b*) See *ante*, p. 37.

by plaint, as actions are now commenced in the County Courts under "The County Courts Act, 1846," s. 59, and all the persons in whom the title is alleged to be shall be plaintiffs, and the persons alleged to be in possession or apparent possession of the property sought to be recovered shall be defendants, and thereupon a summons shall be issued in accordance with the directions of that section, and the plaintiff shall, at the time of the entry of the plaint, deliver to the registrar a statement in writing containing a full description of the property sought to be recovered, and of the annual value thereof, and of that rent, if there be any fixed or paid in respect thereof, and as many copies of the statement as there are defendants.

224. Every summons in ejectment shall contain the names, addresses, and descriptions of all the plaintiffs and defendants; and there shall be annexed thereto a copy of the statement required by the last rule, sealed with the seal of the Court, and the statement shall be deemed part of the summons, which summons shall be in the form provided in the Schedule to these rules, and be made returnable at a Court to be holden not less than forty-two clear days from the day of the date thereof.

225. Every summons in ejectment shall be served in the same manner as summonses to appear to plaints in County Courts are now served, except that it shall be served thirty-five clear days before the return-day thereof; and if the defendant cannot be found, and his place of abode shall not be known, or admission thereto cannot be obtained for serving the summons in ejectment, a copy of the summons shall be affixed to the door of the dwelling-house or to some conspicuous part of the property sought to be recovered, and such affixing shall be deemed good service on the part of the defendant.

226. The word "*Writ*," in the proviso to section 12 of 30 & 31 Vict. c. 142, shall mean any summons in ejectment issued and served under the last two preceding rules, and any order obtained under such proviso shall be lodged with the registrar before the return-day, and the registrar shall thereupon make a memorandum of such order in the plaint book, and shall transmit by post such order, together with a copy of the summons and particulars to the "masters" of the superior Court named in the order, and shall give notice to the plaintiff by post, of such transmission. 30 & 31 Vict. c. 142, s. 12.

227. Any person not named as defendant in a summons in ejectment shall by leave of the registrar be allowed to appear and defend, on filing, twelve clear days before the return-day, an affidavit, together with as many copies thereof as there are plaintiffs and defendants, showing that he is in possession, either by himself or his tenant, of the property mentioned in the summons, or some part thereof (such part being described in the affidavit with reasonable certainty).

228. Upon such affidavit being filed, the registrar shall enter the name, address, and description of the person filing the same in the plaint book as defendant, in addition to the names of the person or persons originally made defendants, and shall, ten clear days before the return-day, give notice by post or otherwise to the plaintiffs and defendants that the person filing the affidavit has filed the same, and will appear and defend at the trial of the action, annexing to each notice a copy of the affidavit.

229. Any defendant in ejectment may give notice in writing, signed by himself or his attorney, to the registrar, twelve clear days before the return-day, that he intends to limit his defence to a part only of the property mentioned in the summons, describing that part in such notice with reasonable certainty, and with such notice he shall deliver to the registrar as many copies thereof as there are plaintiffs, and the registrar shall, ten clear days before the return-day, send the same, sealed with the seal of the Court, by post to each of the plaintiffs.

230. Want of "reasonable certainty" in the description of the property or any part of it in any summons or notice shall not nullify it, but the judge may, if he sees fit, order the description to be amended at the hearing, or he may order an amended description to be delivered, subject in either case to such terms as he may think fit.

231. Any action of ejectment may, if either party require a jury to be summoned, be tried by a jury in the same manner and subject to the same rules as actions have heretofore been tried by juries in the County Courts.

232. Every action of ejectment shall be tried in the same manner as actions in the County Courts have heretofore been tried, and the question at the trial shall,

except in the cases hereafter mentioned in Rules 239 and 242, be whether the statement in the summons of the title of the plaintiffs is true or false, and if true, then which of the plaintiffs is entitled, and whether to the whole or part, and if to part, then to which part of the property mentioned in the summons, and the judgment shall be in the form in that behalf provided in the Schedule to these rules, or to the like effect, with such modifications as may be necessary to meet the facts.

233. Where the title of the plaintiff shall appear to have existed as alleged in the summons, and at the time of the service thereof, but it shall also appear to have expired before the trial, the plaintiff shall be entitled to a judgment according to the fact that he was so entitled, and for his costs of suit, unless the judge shall otherwise order.

234. Where at the hearing any defendant appears and the plaintiff does not appear, the case shall be struck out, and the defendant appearing shall have judgment for his costs; and if the plaintiff appears and no defendant appears, the plaintiff, on proof of the service of the summons and of his title, shall be entitled to judgment for the recovery of possession.

235. Where all parties to any action of ejectment agree upon the facts, they may, by leave of the registrar, state a case for the opinion of the judge, and the action shall in such case be heard and determined by the judge upon the facts stated in such case; provided, that if the parties state a case under this rule they shall deliver to the registrar, six clear days before the return-day, two copies, signed by the parties or their respective attorneys, of such case, with the points to be argued stated in the margin, and the registrar shall seal both copies, and forthwith send one of such copies to the judge and file the other.

236. Where in an action of ejectment judgment is given for the plaintiff, execution may issue upon a day to be named in the judgment, and if no day be named then it may issue after the expiration of fourteen clear days from the day on which judgment shall have been given, unless the judge shall otherwise order.

237. Where any judgment in ejectment has been obtained for recovery of possession and costs, there may be either one warrant or separate warrants of execution

for the recovery of possession, and for the costs, at the election of the plaintiff.

238. Where a judgment in ejectment is given for the defendants or any of them, execution may issue for costs against the plaintiffs upon a day to be named in the judgment, and if no day be named then it may issue after the expiration of fourteen clear days from the day on which judgment shall have been given, unless the judge shall otherwise order.

239. Where upon the trial of any action of ejectment it shall be proved that the defendant is joint tenant, tenant in common, or coparcener with the plaintiff, then, unless also an actual ouster of the plaintiff shall be proved, the defendant shall be entitled to judgment and costs, but if such ouster be proved, then the plaintiff shall be entitled to judgment for the recovery of possession and costs.

240. The death of a plaintiff or defendant shall not cause an action of ejectment to abate, but it may be continued as provided by the next nine following rules.

241. Where any party to an action of ejectment dies before the return-day, the surviving party or parties thereto shall appear in Court on the return-day.

242. Where a sole plaintiff or one of several plaintiffs in ejectment claiming otherwise than as joint tenants, dies before the return-day, it shall be lawful for the heir or other legal representative of such deceased plaintiff, on the return-day, to apply to the judge upon filing an affidavit of the death of the deceased plaintiff, and of his own heirship or other representative character, for leave to continue the action in his own name as plaintiff, and the judge may make an order granting such leave upon such terms, as to adjournment and payment of costs, as he shall see fit, and thereupon the entry of the plaint in the plaint book shall be amended by substituting for the name of the deceased plaintiff the name of the applicant as heir or other legal representative, as the case may be, of the deceased plaintiff; and the substituted plaintiff shall not recover unless he shall prove the title of the deceased plaintiff as stated in the summons, and also that he is heir or other legal representative of the deceased plaintiff, but upon proof of such title and of his representative character as alleged, he shall be entitled to judgment for the recovery of possession and costs: Provided that if the defendant

do not appear on the return-day, the cause shall be adjourned, and a copy of the order shall be sent by the registrar by post or otherwise to the defendant.

243. Where one of several plaintiffs dies before the return-day, and no application be made on the return-day by the legal representatives of the deceased plaintiff, the name of the deceased plaintiff shall be struck out, and the action shall proceed and be tried as between the surviving plaintiff and the defendant; and the surviving plaintiff shall have judgment for the recovery of the whole of the property mentioned in the summons if he shall prove himself entitled thereto, or if not, then for the recovery of such part or share thereof as he shall prove himself entitled to, and for costs.

244. Where judgment in ejectment is given for two or more plaintiffs, and one or more of such plaintiffs die after judgment and before execution is executed, the surviving plaintiff or plaintiffs may apply to the registrar, upon an affidavit stating the death of the deceased plaintiff or plaintiffs, to make an entry in the minute book of the death of such plaintiff, and strike out therefrom the name of the deceased plaintiff or plaintiffs, and to issue execution for the recovery of the possession of the entirety of the property and the costs; but nothing herein contained shall affect the right of the legal representatives of the deceased plaintiff or plaintiffs, or the liability of the surviving plaintiff or plaintiffs to such legal representatives; and the entry of possession of such surviving plaintiff or plaintiffs under such execution shall be considered as an entry of possession on behalf of such legal representatives in respect of the property to which they shall be entitled as such representatives.

245. Where a sole plaintiff, or all the plaintiffs in ejectment shall die after judgment, but before execution executed, any person or persons entitled upon the death of the plaintiff or plaintiffs to the property recovered may issue execution, upon leave of the registrar, as provided by Rule 201.

246. Where before or after the return-day one or more of several defendants in ejectment who defend jointly shall die, the name of the deceased defendant shall, upon application of either party, and upon proof of the death, be struck out, and the action shall proceed against the surviving defendant or defendants.

247. Where a sole defendant or all the defendants in an action of ejectment shall die before the return-day, any person or persons claiming to be entitled to the property on the death of the defendant or defendants may apply at the hearing to the judge, upon filing an affidavit stating such death, and the grounds upon which he claims the property, for leave to defend in the place of the deceased defendant or defendants, and the judge may make an order granting such leave upon such terms as to adjournment and payment of costs as he may see fit, and thereupon the entry of the plaint in the plaint book shall be amended by substituting the name of the applicant for that of the deceased defendant, and the action shall proceed, as if the applicant had originally been defendant.

Provided, that if no such application be made, the action may proceed and be tried as in the case of the non-appearance of a defendant, and the plaintiff, upon proof of the service of the summons and of his title to the property, shall be entitled to judgment for the recovery of possession.

Provided also, that if no such application be made, any person claiming to be entitled to the property upon the death of the defendant or defendants may apply for a new trial, upon filing an affidavit stating the death of the defendant, the grounds upon which he claims the property, and that he had no notice or knowledge of the summons before the return-day thereof: and if the judge orders a new trial, the name of the applicant shall be substituted for that of the deceased defendant in the minute book and summons, and the action shall proceed as if the applicant had originally been defendant; and if the judge refuses a new trial, he shall have power to order the applicant to pay the costs of the application.

248. Where a sole defendant or all the defendants in ejectment shall die after judgment, the plaintiff shall nevertheless be entitled to proceed by execution for the recovery of possession, and to proceed by summons in the nature of a *scire facias* for the recovery of the costs against the legal personal representatives of the deceased defendant or defendants.

249. Rule 247 shall apply to the case of the death before the return-day in ejectment of one of several defendants who defends separately, whether any other defendant defends for the same property or not.

250. Where a plaintiff in ejectment is desirous of not proceeding in the action, he may give notice thereof to the registrar and to the defendant by post, and upon the receipt of such notice the registrar shall enter in the minute-book judgment of nonsuit with costs up to that day.

251. Where a plaintiff in ejectment is desirous of not proceeding further in the action in respect of any portion of the property, he may give notice thereof by post to the registrar and to the defendant or defendants defending for such portion, describing in the notice such portion, and upon the receipt of such notice the registrar shall make a memorandum thereof in the plaint-book, and the action shall proceed for the recovery of the remainder of the property; and the defendant or defendants receiving such notice shall not be entitled to any further costs in respect of the defence for such portion of the property than those incurred up to the receipt of such notice, unless the judge shall otherwise order.

252. Where one of several plaintiffs in ejectment is desirous of not proceeding in the action, be may apply to the judge on the return-day to have his name struck out of the proceedings, and an order may be made thereupon as to costs or otherwise, as the judge thinks fit, and the action shall proceed at the suit of the other plaintiffs.

253. A sole defendant or all the defendants in ejectment may, at any time before the return-day, confess the action as to the whole of the property by signing in the presence of the registrar or of one of his clerks, or of an attorney of one of the superior Courts, and attested by the person in whose presence it is signed, an admission of the title of the plaintiff to the property, and of his right to the possession thereof; and the registrar shall upon the receipt of such admission forthwith give notice thereof by post to the plaintiff, and the judge may on the return-day, upon proof of the signature of the defendant or defendants to such admission by affidavit or otherwise in case the same is not attested by the registrar or his clerk, and without any proof of the plaintiff's title, give judgment for the plaintiff for the recovery of possession and for costs; provided that, if the plaintiff receive notice of such admission before the return-day he shall not be entitled to any costs incurred

subsequently to the receipt of such notice, except the costs of attending the Court on the return-day, unless the judge shall otherwise order.

254. Where one of several defendants who defends separately for a portion of the property for which no other defendant defensd is desirous of confessing the action as to such portion and admitting the plaintiff's title thereto, he may sign a like admission as is provided for by the last preceding rule, describing in the admission such portion, and similar proceedings shall be taken thereupon as in the case of a confession of the action as to the whole of the property, and the action shall proceed against the other defendants.

255. Where proceedings to recover possession of a tenement can be taken under the provisions of "The County Courts Act, 1856," no action of ejectment shall be brought under "The County Courts Act, 1867."

256. Where an action of ejectment shall be brought by any mortgagee or any person claiming under him for the recovery of the possession of any mortgaged property, and no suit shall be then depending in any superior Court of Equity, or in any County Court, touching the foreclosure or redemption of such mortgage, a defendant or any of the defendants who shall have the right to redeem such mortgage may, ten clear days at least before the return-day, pay into Court such sum of money as may be due for principal and interest on such mortgage, and for costs, and the registrar shall thereupon give notice by post to the plaintiff, of such payment into Court, and on the return-day if the plaintiff shall not appear, or if he shall appear and agree to accept the sum paid into Court for principal, interest, and costs, or if the judge shall determine that the sum paid into Court is sufficient, the Court shall order the plaintiff within a certain time, at the defendant's expense, to re-convey the mortgaged property, and to deliver up to the defendant all the title deeds and writings relating thereto: but if the judge shall determine that the sum paid into Court is not sufficient, he shall determine what further sum is due to the plaintiff for principal, interest, and costs, and shall order the same to be paid into Court by the defendant on a day to be fixed, and shall further order that upon such further payment into Court the plaintiff shall, within a certain time, at the defendant's expense, re-convey the mortgaged property, and deliver

up to the defendant all the title deeds and writings relating thereto, and that, upon default being made in payment of such further sum, that execution shall issue for the recovery of possession of the property and costs: Provided that where the judge finds the payment into Court insufficient, and the defendant makes default in payment of the further sum found by the judge to be due, and the plaintiff issues execution for the recovery of possession, then the registrar shall, upon the application of the defendant, repay to him the sum before paid into Court; provided further, that the registrar shall not pay out to the plaintiff the sum paid into Court under this rule, except the costs last mentioned, unless he shall be satisfied by the affidavit of himself or of his attorney that the plaintiff has re-conveyed the mortgaged property to the defendant, and has delivered up to him all the title deeds and writings relating thereto.

Title to Land, Corporeal or Incorporeal Hereditaments, Easements, etc.

257. Actions brought in County Courts under s. 12 of 30 & 31 Vict. c. 142, other than actions of ejectment shall be commenced, prosecuted, and tried in the same manner, and subject to the same rules, regulations, and practice in and subject to which actions are now commenced, prosecuted, and tried in the County Courts, except that, whatever the amount of damages claimed may be, the plaintiff shall, at the time of the entry of the plaint, deliver to the registrar a concise statement in writing signed by himself or his attorney, of his cause of action, and of the particulars thereof, together with as many copies of such statement as there are defendants, and a copy of such statement, sealed with the seal of the Court, shall be annexed to the summons, and such statement shall be deemed part of the summons. (*a*) 30 & 31 Vict. c. 142, s. 12.

258. Any action brought under s. 12 of 30 & 31 Vict. c. 142, may, if either party require a jury to be summoned, be tried by a jury in the same manner and subject to the same rules as actions have heretofore been tried by juries in the County Courts. 30 & 31 Vict. c. 142, s. 12.

Replevin. (*b*)

259. In actions of replevin no other cause of action shall be joined in the summons. 9 & 10 Vict. c. 95, s. 119.

(*a*) See the observations *ante*, p. 38.

(*b*) See 'Practice and Evidence in the County Courts,' third edition, part i. chapter x.

9 & 10 Vict. c. 95, s. 119.

260. On entering a plaint in replevin, the plaintiff must specify and describe in a statement of particulars, the cattle, or the several goods and chattels taken under the distress, and of the taking of which he complains.

261. All actions of replevin in cases of distress for rent in arrear, or for damage feasance, shall be tried in a summary way as other actions in the Courts holden under the authority of the Act of the 9 & 10 Vict. c. 95, and the judgment therein, in ordinary cases, whether for plaintiff or defendant, shall be according to the forms set forth in the schedule.

262. Where the distress is for rent, and the defendant succeeds in the action, if the defendant require, the judge shall, if the cause be tried without a jury, and the jury shall, if the cause be tried with a jury, find the value of the goods distrained, and if the value be less than the amount of rent in arrear, judgment shall be given for the amount of such value, but if the amount of the rent in arrear be less than the value so found, judgment shall be given for the amount of such rent, and may be enforced in the same manner as any other judgment of the Court.

263. Where the distress is for damage feasance, and the defendant is entitled to judgment for a return, if the plaintiff require, the judge shall, if the cause be tried without a jury, and the jury shall, if the cause be tried with a jury, find the amount of the damage sustained by the defendant, and judgment shall then be given in favour of the defendant, in the alternative, for a return, or for the amount of the damage so found.

Detinue. (*a*)

264. The judgment in detinue, if for the plaintiff, shall be for the value of the goods detained, together with a sum to be stated in the judgment by way of damages for the detention and costs; but it may be made part of the order that on payment of damages for the detention, and costs, and return of the goods on or before a day to be named, satisfaction shall be entered.

Confessions under "The County Courts Act, 1850." (*b*)

13 & 14 Vict. c. 61, s. 9.

265. All confessions under s. 8 of 13 & 14 Vict. c. 61, shall be delivered to the registrar five clear days before the return-day: Provided that, at any time before

(*a*) See 'County Courts Practice and Evidence,' third edition, pp. 2, 118–404.

(*b*) Ibid., p. 65.

the cause is called on, the defendant may confess and admit the claim according to the form set forth in the schedule, subject, however, to an order by the judge to pay such costs as the plaintiff has incurred in consequence of the defendant's not having delivered such confession as hereinbefore required.

Consents to Judgment under "The County Courts Act, 1850." (a)

266. In all cases of consent under s. 9 of 13 & 14 Vict. c. 61, the defendant may confess the amount of the plaintiff's costs besides the Court fees, and the judgment may be entered accordingly, and the amount of the plaintiff's costs shall be stated separately. 13 & 14 Vict. c. 61, s. 9.

Cases under "The County Courts Act, 1856." (b)

267. Where the parties, in pursuance of s. 23 of 19 & 20 Vict. c. 108, agree to try any action in a County Court, a plaint shall be entered, and a summons shall be issued thereon, as in other cases, and all the rules and practice of the Court shall be adopted in such cases so far as the same are applicable. 17 & 18 Vict. c. 108, s. 23.

Registry of Judgments of County Courts.

268. A return of every judgment entered in "The City of London Court" for the sum of ten pounds and upwards, shall be transmitted to the Registrar of Judgments of County Courts in London, in the same manner as returns of judgments entered in a County Court are now transmitted.

Proceedings under the Literary and Scientific Institutions, the Friendly Societies, and the Industrial and Provident Societies Acts. (c)

269. In proceedings in the County Courts under 17 & 18 Vict. c. 112, 18 & 19 Vict. c. 63, and 30 & 31 Vict. c. 117, a plaint shall be entered, and a summons shall be issued thereon, and the rules and practice of such Courts shall be adopted with respect to such proceeding, so far as the same are applicable. 17 & 18 Vict. c. 112, 18 & 19 Vict. c. 63, 30 & 31 Vict. c. 117.

270. Where a defendant is a trustee, member of the general committee of management, treasurer, or other officer of an institution or society established under any Act mentioned in the last rule, the summons shall be

(a) See 'County Courts Practice and Evidence,' third ed., p. 66.
(b) Ibid., p. 35. (c) Ibid., pp. 59, 603.

served in the mode, if any, prescribed by the Act under which any such institution or society is established or regulated, and if no mode of service be thereby prescribed, then at the usual place of business of the institution or society, and if there be no such place of business, then according to the ordinary practice of the Court.

Cases under "The Summary Procedure on Bills of Exchange Act, 1855." (*a*)

271. Where a judge is satisfied that the bailiff has made all reasonable efforts to effect personal service of the summons, or that the summons has come to the knowledge of the defendant, or that he wilfully evades service of the same, the judge may order that the plaintiff may proceed as if personal service had been effected, subject to such conditions as to the judge may seem fit.

272. Where a defendant applies for leave to defend, he shall satisfy the judge, or in his absence the registrar, by affidavit, that good grounds exist for granting leave to defend the action, and shall leave with the registrar such affidavit, together with a copy thereof, and shall, if required so to do by the judge or registrar, give security according to the provision of s. 2 of 18 & 19 Vict. c. 67.

273. Where leave is given to defend, the registrar shall appoint the cause to be heard at the first convenient sitting of the Court to be held after such leave is granted, and shall send to the plaintiff notice thereof according to the form set forth in the Schedule, together with a copy of the affidavits made by the defendant, and shall also send to the defendant by post a notice according to the form in the Schedule.

274. No order on a judgment by default under 18 & 19 Vict. c. 67 need be drawn up or served.

275. Any application, under s. 3 of 18 & 19 Vict. c. 67, to set aside the judgment, shall be made to the judge of the Court; but, until the judge can hear the same, execution shall be stayed, upon the defendant's giving security to abide the decision of the judge, in accordance with the practice in cases of appeal under rules 189 and 190.

(*a*) See 'County Courts Practice and Evidence,' third edition, pp. 51 and 73.

Proceedings under "The Succession Duty Act, 1853," *"The Metropolitan Building Act,* 1855," *"The Merchant Shipping Act,* 1862." (*a*)

276. In proceedings in the County Courts under s. 50 of 16 & 17 Vict. c. 51, 18 & 19 Vict. c. 122, and 25 & 26 Vict. c. 63, a plaint shall be entered, and a summons shall be issued thereon, and the rules and practice of the Court shall be adopted with respect to such proceedings, so far as the same are applicable. 16 & 17 Vict. c. 51, s. 50. 18 & 19 Vict. c. 122. 25 & 26 Vict. c. 63.

"*The Absconding Debtors Act,* 1851." (*b*)

277. Where a warrant shall have been granted to the high bailiff of a County Court under "The Absconding Debtors Act, 1851," such high bailiff shall not be required to execute the same out of the district of the Court for which he shall have been appointed high bailiff, but if the person against whom such warrant shall have been granted cannot be found within the district of the Court, by the judge of which it shall have been granted, such high bailiff shall forthwith transmit such warrant to the high bailiff of any other County Court within the district of which such party shall then be or be believed to be, and thereupon such last-mentioned high bailiff shall be authorized and required to execute such warrant, and otherwise to act in the matter in all respects as if the warrant had been directed to him by the judge of the Court of which he is the high bailiff. 14 & 15 Vict. c. 52.

Forms.

278. In proceedings for which forms are not provided in the Schedule, the registrars shall frame the forms required, using as guides those so provided.

Insolvency.—Pending Cases.

279. The Rules of Practice and Orders of the Court for the Relief of Insolvent Debtors in London shall be the Rules of Practice and Orders in insolvency and protection cases in the County Courts, so far as the same are applicable.

(*a*) See 'County Courts Practice and Evidence,' third edition, pp. 51 and 73.

(*b*) Ibid., p. 612.

ORDERS AND RULES IN EQUITY.

Order I.—Suits.

Plaints and Summons.

Rule 1. Commencement of Suit.

All suits under the 1st, 2nd, 3rd, or 7th clauses of the first section of the Act, (*a*) and under the ninth section of 30 & 31 Vict. c. 142, shall be commenced by filing a plaint in equity in the County Court to which jurisdiction in the matter is given by the 10th section of the Act.

Rule 2. Names. C. C. Rule 38.

Every plaint in equity shall state the name, address, and description of the plaintiff, and of the person intended to be brought before the Court as defendant: and where any party sues or is sued in a representative character he shall be so described in the plaint; but this rule shall be subject to the 38th Rule of the preceding County Court Rules.

Rule 3. Plaint.

Every plaint in equity shall contain a concise statement of the grounds upon which the plaintiff seeks to obtain relief; and shall ask for the specific relief to which he conceives himself entitled, and also for general relief.

Rule 4. Plaint filed by attorney.

Where the plaint is filed by an attorney, he shall indorse thereon his name or firm and place of business, and that the plaintiff sues by him as attorney; and where there is more than one plaintiff, and the plaint is not filed by an attorney, the plaintiff who actually files the same shall indorse thereon his name and address.

Rule 5. Form of Plaint.

Plaints in equity may be in forms similar to those set out in the schedule to these orders, with such variations as the nature and circumstances of each particular case may require.

Rule 6. Delivery to registrar and filing of plaints.

The plaintiff or his attorney shall deliver at the office of the registrar the plaint, with as many copies thereof as there are persons to be brought before the Court as defendants, and the registrar shall forthwith indorse on the plaint a memorandum of the day on which the same was received by him, and when such plaint shall be so indorsed it shall be taken for all purposes to have been duly filed on the date so indorsed thereon.

(*a*) See 'Davis's Equitable Jurisdiction Act,' pp. 17–26.

Rule 7. Summons on plaint.

The registrar shall, on the filing of such plaint, make out a summons to the defendant, or to every defendant where there is more than one, to appear, and submit to the judgment of the Court thereon.

Rule 8. Date and return of summons.

The summons shall be in the form in the schedule, and be dated of the day on which the plaint was filed, and may be returnable at any Court to be holden not less than one calendar month nor more than three calendar months from the filing thereof.

Rule 9. Service of summons.

The summons, with a copy of the plaint annexed thereto, shall be issued by the registrar to the bailiff forthwith, who shall serve the same within seven days, and the service thereof shall be proved, in conformity with the present practice of the County Courts; provided always, that the Court may, upon facts duly verified by affidavit, allow substituted service where justice requires it.

Rule 10. Service when defendant is out of jurisdiction of County Courts.

Where a defendant shall be out of England, the judge, or in his absence the registrar, may, upon an affidavit of the fact, direct the service of the plaint and summons to be effected within such time and in such manner as the judge or registrar may think fit.

Order II.—Suits.

Proceedings after Service.

Rule 1. Admission.

Where any defendant desires to admit the truth of the allegations in the plaint, and to submit to the judgment of the Court, he may, at any time before the return-day of the original summons, in the presence of a registrar of a County Court, or in the presence of one of his clerks, or of an attorney of one of the superior Courts, sign an admission in the form contained in the schedule to these Orders; and the signature of the defendant thereto shall be verified by affidavit, unless signed in the presence of the registrar of the Court in which the suit is, or of one of his clerks.

Rule 2. Notice of admission.

The admission shall be delivered to the registrar, together with a copy thereof for each of the plaintiffs, or, where the plaint is filed by an attorney, with a copy for such attorney only; and the registrar shall forthwith file the same, and transmit a copy by post to each plaintiff, or the attorney, as the case may be, and after the receipt of such copy the plaintiff shall be entitled to the costs then already incurred, and to the further

costs of attending the Court and obtaining the decree or order to be made upon such admission, but to no other costs.

Rule 3. Statement in the nature of a disclaimer or answer may be filed by defendant.

The defendant may, within eight days after the service of the summons, by a statement in writing signed by him, disclaim any interest in the subject matter of the suit, or admit or deny any of the statements in the plaint, or raise any question of law on such statements without admitting the truth thereof; or he may state concisely any new fact or document upon which he intends to rely as a defence at the hearing, or which he thinks advisable to bring to the notice of the Court. Provided always, that in exercising his discretion as to costs, the judge shall consider the fact of a defendant having or not having availed himself of the powers given by this rule.

Rule 4. Statement to be filed.

The statement under the last foregoing rule shall be delivered to the registrar, together with a copy thereof for each of the plaintiffs, or where the plaint is filed by an attorney, with a copy for such attorney only; and the registrar shall forthwith file the same, and transmit a copy by post to each plaintiff or the attorney, as the case may be.

Rule 5. Statement filed by attorney.

Where the statement is filed by an attorney he shall indorse thereon his name or firm and place of business, and that the defendant defends by him; and where it is not filed by an attorney, the defendant who actually files the same shall indorse thereon his name and address.

Rule 6. Dismissal of suit.

The plaintiff may, at any time before the return-day of the summons, by notice in writing delivered at the office of the registrar, require the plaint to be dismissed as against all or any of the defendants, with costs, without prejudice to further proceedings or suits, and such notice shall operate as an order to dismiss accordingly; and the registrar shall forthwith file such notice, and forward a copy thereof by post or otherwise to each of the defendants.

Order III.—Suits.

Evidence.

Rule 1. Evidence to taken vivâ voce.

Except where otherwise provided by these Orders, the evidence of witnesses shall be taken vivâ voce on oath according to the present practice on the hearing of plaints.

Rule 2. As to admission of documents. 21 & 22 Vict. c. 27, s. 7.

Where a party desires to give in evidence any document, he may, not less than five days before the hearing, give notice to any other party in the cause who is competent to make admissions, requiring him to inspect and admit such document; and if such other party shall not within a reasonable time make such admission, any expense of proving the same at the hearing shall be paid by him, whatever be the result of the cause, unless the Court shall otherwise order; and no costs of proving any document shall be allowed unless such notice shall be given, except in cases where, in the opinion of the registrar, the omission to give such notice has been a saving of expense.

Rule 3. Inspection of documents in possession or control of an opposite party. 15 & 16 Vict. c. 86, s. 18.

Where a party desires to inspect any document in the possession or under the control of any other party, he may, five days before the hearing, give notice to such other party that he or his attorney desires to inspect the same at any place to be appointed by such other party; and if such other party shall not appoint a convenient place, or allow the party giving such notice, or his attorney, to inspect such document within three days after receiving such notice, the judge may adjourn the hearing, and make such order as to costs as he shall think fit.

Rule 4. Summons to witness.

Where a party requires the attendance of any other party, or of any witness, either to give evidence or to produce documents, he shall apply to the registrar to issue a summons requiring such other party or witness to attend the Court or the registrar, as the case may be, or to attend and produce documents; and such summonses shall respectively be drawn up by the registrar, and be issued by him to the bailiff, who shall serve the same; and in every summons to produce documents the registrar shall insert a description of the documents required.

Rule 5. Compulsory production of documents by parties to suit. 15 & 16 Vict. c. 86, ss. 18 & 20.

Where a party served with a summons under the last rule shall not at the hearing produce the documents required, the Court may, upon admission or proof of the service of such summons within a reasonable time, and that such documents are in the possession of the party so served, and that they relate to the matter then pending before the Court, make an order for their production by him, and the Court may deal with them, when so produced, and with all costs occasioned by their non-production, as may appear just. Provided that nothing herein shall prevent the Court from receiving secondary evidence of any document of which notice to produce has been given.

RULE 6. Documents unobjected to received without formal proof.

Where any documents are produced to the Court from proper custody, they will be read without further proof, if they appear genuine, and if no objection be taken thereto; and if the admission of any document so produced be objected to, the judge may adjourn the hearing for the production of the documents, and the party objecting shall pay the costs caused by such objection, in case the documents shall afterwards be proved, unless the judge shall otherwise order.

RULE 7. Affidavit.

Where a party desires to use at the hearing an affidavit by any particular witness, or an affidavit as to particular facts, he may, ten days before the hearing, give a notice, with a copy of such affidavit annexed, to the party against whom such affidavit is to be used; and unless such last-mentioned party shall within five days give notice to the other party that he objects to the use of such affidavit, he shall be taken to have consented to the use thereof.

RULE 8. Examination *de bene esse*.

Where it shall be necessary to examine a witness *de bene esse*, application upon affidavit shall be made to the judge to appoint an examiner for that purpose.

RULE 9. Special examiner.

Upon the application of a party desirous to examine a witness residing out of the jurisdiction of the Court, the judge may, if he thinks fit, appoint the registrar of the Court within the district of which such witness resides to take the examination of such witness.

RULE 10. How examination conducted.

Where any witness is examined by a registrar he shall be examined on oath, and the registrar shall transcribe the answers of such witness, and the deposition shall be subscribed by the witness and the registrar who shall have so examined him, and shall then be transmitted by post to the registrar of the Court in which the suit or proceeding is pending.

RULE 11. Allowance to witnesses.

The allowance to be made to witnesses for attendance either before the Court or registrar shall in no case exceed the highest rate of the allowance in actions.

ORDER IV.—SUITS.

Hearing.

RULE 1. How parties to come prepared.

Upon the day on which the summons is returnable all parties shall come to the Court prepared, so far as the nature of the case will admit, with evidence to enable the judge to try the whole matter of the suit upon the merits, and then to determine the same by a final decree or to make such decretal order, or give

such directions for adding parties to the suit, for making inquiries, taking accounts, realizing assets, or doing any act which the judge may consider necessary to enable him to make a final decree upon a day to which the hearing may be adjourned.

Rule 2. Hearing.

A suit in equity shall be heard in open Court as plaints in the County Court are now tried.

Rule 3. Affidavits.

Affidavits and depositions used at the hearing shall be read as the evidence of the person by whom they are used.

Rule 4. Decree or decretal order.

Upon the hearing the Court may dismiss the suit, or grant the relief asked by the plaint, or any part thereof, or may grant any other relief consistent with the case made by the plaint, or make any order giving directions for, or with respect to, the prosecution of the suit, as the circumstances of the case may require, and also make such order as to costs as the Court may think fit.

Rule 5. Jury. s. 7 of the Act.

Where the Court shall order any question of fact, or any question as to the amount of damages, to be tried by a jury, the Court shall adjourn the hearing, and appoint a day for the trial of such question by a jury; and thereupon the practice shall be in all respects the same as in actions where either party has required a jury, including the power to direct a new trial when necessary.

Rule 6. Record for trial.

Where the Court shall order any question of fact, or any question as to the amount of damages, to be tried by a jury, the judge shall reduce the question into writing, and the same shall be called the "Record for Trial."

Order V.—Suits.

Decretal Orders.

Rule 1. Registrar to draw order.

Where the Court makes any decretal order the registrar shall, as soon thereafter as conveniently may be, draw up, seal, and file such order.

Rule 2. Preparation of a deed.

Where a decretal order directs any deed to be prepared and executed, it shall state by what party the said deed shall be prepared, and to whom it shall be submitted for approval.

Rule 3. Receiver.

Where upon the hearing it appears to the Court expedient that a receiver be appointed, such appointment shall be made by the decretal order, whether the same be asked as part of the relief in the plaint or not.

Rule 4. Sale of real property.

Where real property is ordered to be sold, the decretal order shall direct who shall have the conduct of the sale, and by whom the conditions and contracts of sale, and the abstract of title, shall be prepared. And where any conditions or contracts are ordered to be settled by a conveyancing counsel, it shall name the counsel to whom they are to be submitted.

Rule 5. Sale of personal property.

Where a decretal order directs any personal property to be sold, the same shall be sold under the superintendence of the high bailiff, by public auction, unless the Court shall otherwise order.

Rule 6. Accounts or inquiries.

Where any decretal order directs any accounts or inquiries to be taken or made, or any acts to be done, by the registrar, high bailiff, receiver, or parties, it shall name a day within which all such acts shall be done, and accounts and inquiries completed, and shall also name a day, not less than fourteen days after that day, on which the registrar shall certify the result of the accounts and inquiries, and what has been done under such decretal order, and on which the cause will be further heard, and if practicable a final decree made.

Order VI.—Execution of Decretal Orders.

Rule 1. Deed how settled.

Where a deed is ordered to be prepared, and the parties cannot agree upon the form thereof, the judge may, upon the application of either party, settle the same himself, or name a conveyancing counsel by whom the same shall be settled, subject to the final approval of the judge.

Rule 2. In taking accounts, &c., Registrar to be chief clerk. 15 & 16 Vict. c. 80, ss. 30, 31.

Where a decretal order directs that any account be taken or inquiry made, such account shall be taken and inquiry made by the registrar, and he shall for that purpose have all the powers and discharge all the duties of a Chief Clerk of the Master of the Rolls or a Vice-Chancellor in the Court of Chancery; and all parties prosecuting any accounts or inquiries shall have the same power of summoning witnesses, including as witnesses any parties in the cause, and of examining them on such accounts or inquiries, and of compelling the production of documents, as they had on the original hearing; and all rules as to the summoning, swearing, and examining of witnesses, and the production of documents at the hearing, shall be applicable (as far as may be) to such summoning, swearing, examining, and production on taking any such accounts, or prosecuting any such inquiries.

Where a decretal order directs accounts to be taken, any books of account in which the accounts required to be taken, or any of them, have been kept, shall, unless the judge shall otherwise direct, be taken as *primâ facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

Rule 3. In taking accounts, account books to be primâ facie evidence of the matters therein contained.

Every advertisement for creditors or other persons having any claim upon or interest in the distribution of any assets to be administered by the Court, which shall be issued pursuant to any decretal order, shall direct every such creditor or other person, by a time, to be thereby limited, to send to the registrar his name and address, and the full particulars of his claim or interest and a statement of his account, and the nature of the security (if any) held by him, and at the time of directing such advertisement a time shall be fixed for adjudicating on the claims.

Rule 4. Advertisement for creditors, etc.

No such creditor or other person need make any affidavit, or attend in support of his claim, unless he is served with a notice requiring him to do so, as hereinafter provided.

Rule 5. Creditors need not attend without notice.

Every creditor shall produce or transmit to the registrar any security held by him, at such time as shall be specified in the advertisement for that purpose, being the time appointed for adjudicating on the claims; and every creditor shall, if required, by notice in writing to be given by the registrar, produce or transmit to the registrar all other deeds and documents necessary to substantiate his claim before the registrar at his office at such time as shall be specified in such notice.

Rule 6. Securities, deeds, and documents, to be produced to registrar.

Every person claiming as heir-at-law, devisee, next of kin, or legatee shall, if required, by notice in writing to be given by the registrar, produce or transmit to the registrar any pedigree or proof mentioned in such notice within such time as shall be therein specified.

Rule 7. Pedigree or proof to be produced to registrar.

In case any creditor or other person shall neglect or refuse to comply with the two last preceding rules, he shall not be allowed any costs of proving his claim unless the registrar shall otherwise direct.

Rule 8. Costs when not allowed.

At the time appointed for adjudication upon the debts or claims, the registrar shall take the evidence of the executor, administrator, or other accounting party upon such debts or claims, and may thereupon, in his discre-

Rule 9. Proof of debts or claims.

tion, allow any of such debts or claims without further proof, and may direct such investigation of all or any of the debts or claims not allowed, and require such further particulars, information, or evidence relating thereto as he may think fit, and may, if he so think fit, require any creditor or other person to attend and prove his claim, or any part thereof; and the adjudication on such claims as are not then allowed shall be adjourned to a time to be then fixed.

RULE 10. Notice of allowance.

Notice of allowance shall be given by the registrar to every creditor or other person whose claim, or any part thereof, has been allowed, and notice shall also be given by him to every such creditor or other person as he shall think fit, to attend and prove his claim or such part thereof as is not allowed, by a time to be named in such notice, not being less than seven days after such notice, and to attend at a time to be therein named, being the time to which the adjudication thereon shall have been adjourned; and in case any such creditor or other person shall not comply with such notice, his claim, or such part thereof as aforesaid, shall be disallowed.

RULE 11. Claims not before made.

Any such creditor or other person who has not before sent in the particulars of his claim pursuant to the advertisement, may do so two days previous to any day to which the adjudication is adjourned.

RULE 12. Claims too late.

If any claim be sent in after the time fixed by the advertisement (except as before provided in case of an adjournment) the registrar may, upon special application, entertain the same, upon such terms and conditions as to costs and otherwise as he thinks fit.

RULE 13. Allowances.

In taking any account directed by any decretal order, all just allowances shall be made without any directions for that purpose in such order.

RULE 14. Application to judge for further directions *mero motu*.

Where the registrar, high bailiff, receiver, or any party has by any decretal order been directed to do any act for doing which it may be found necessary to have further directions or an order of the Court, the registrar shall apply to the judge for such direction or order, and upon such application the judge may give such direction or make such order as he may think fit, or may appoint a time to hear all parties upon the application so made by the registrar; and if the judge shall make such appointment for hearing, the same shall operate as a stay of proceedings in the suit until the day so appointed, if he shall so direct.

Order VII.—Suits.

Absent Parties.

Where any matter is referred to the registrar by a decretal order, he shall, as soon as conveniently may be, ascertain if there are any parties who, if the decretal order had been made in a suit pending in the Court of Chancery, ought, under the 42nd section of the 15 & 16 Vict. c. 86, to be served with a notice under rule 8 of such section. Rule 1. Inquiry as to parties.

Where it shall be necessary to serve any parties with the notice mentioned in the foregoing rule, the same shall be prepared by the registrar, and issued by him to the bailiff, who shall serve the same, and upon such notice the party served therewith may attend the proceedings under the decretal order. Rule 2. Notice to parties.

Any party who shall be served with a notice under the last foregoing rule, may apply to the Court at the next sitting, or by leave of the judge at any subsequent sitting, to vary or add to the decretal order. Rule 3. Application to vary or add to decretal order.

Order VIII.—Suits.

Registrar's Certificate.

Where a registrar has been ordered to certify to the Court upon any matter, he shall present to the Court a certificate in writing signed by him. Rule 1. Registrar's certificate.

The registrar shall prepare his certificate seven days before the day appointed for presenting the same, and shall give notice by post to all parties to the suit that the same lies in his office for the inspection of any parties interested therein or affected thereby; and he shall deliver a copy thereof to any person requiring the same, upon payment of the costs of such copy. Rule 2. Registrar's certificate to lie in office.

Where any party interested in, or affected by, the registrar's certificate desires to have the same varied, he shall apply by himself, his counsel or attorney, at the Court on the day appointed for presenting the same, and the judge shall thereupon hear and determine such application, and shall confirm or vary the certificate, and make such further order thereupon as he may think fit. Rule 3. Variation of registrar's certificate.

If no application shall be made to vary the certificate, it shall be taken as confirmed, unless the judge shall otherwise order. Rule 4. Confirmation of certificate.

Order IX.—Suits.

Final Decree.

Rule 1. Final decree.

When the Court has determined all the questions raised between the parties, the registrar shall, as soon thereafter as conveniently may be, draw up a final decree in accordance with the judgment of the Court, and seal and file the same.

Order X.—Suits.

Revivor and Supplement.

Rule 1. Order under 15 and 16 Vict. c. 86, s. 52.

Upon any suit becoming abated by death, marriage, or otherwise, or defective in consequence of any change or transmission of interest or liability, the judge shall, on application of any person having a right so to apply, make an order reviving the said suit, or such supplementary decree or order as may have become necessary in consequence of any such matters as aforesaid.

Rule 2. Order to be served.

An order under the foregoing rule shall be drawn up by the registrar and sealed with the seal of the Court, and issued to the bailiff, who shall serve the same upon such person or persons as the Court shall direct.

Rule 3. Person served to be bound thereby, and may appeal. 15 & 16 Vict. c. 86, s. 52.

After service of such order, the suit shall, as between the party by whom the order has been obtained and the party on whom it has been served, be in the same plight and condition as it was in before it had become abated or defective as aforesaid; provided that the person so served may move the Court at the next sitting, or by leave of the judge at any subsequent sitting, to discharge such order, and such motion shall be made upon affidavit of the facts relied upon to support the same.

Order XI.

Proceedings under the 5th, 6th, and 8th Clauses of the 1st Section of the Act, and Section 24 of 30 & 31 Vict. c. 142. (*a*).

Rule 1. Petition.

All proceedings under the 5th and 6th clauses of the first section of the Act shall be by petition, and such petition need not show title except so far as is provided by the rules in this order.

Rule 2. Petitions by trustees.

Where a trustee petitions under the said 5th clause for an order in any matter relating to the trust, he shall file his petition at the office of the registrar, and leave thereat as many copies thereof as there are persons

(*a*) See Davis's 'Equitable Jurisdiction Act,' and *ante*, p. 41, 42.

beneficially interested in the due execution of the trust, and he shall state in such petition his own name, address, and description, and also the names, addresses, and descriptions of the persons beneficially interested, so far as he is able, and the nature of the trust, and how created, the property or money to which the same relates, and the substance of the order which he seeks to obtain.

RULE 3. Petitions by guardian or trustee of infant or next friend.

Where any guardian or trustee of any infant petitions for an order relating to the maintenance or advancement of such infant, he shall file his petition at the office of the registrar, and where any person, as next friend of an infant, petitions on behalf of such infant for an order upon or against the guardian or trustee of such infant, he shall file his petition at the office of the registrar, and leave thereat as many copies thereof as there are guardians or trustees. And in such petition shall be stated the names, addresses, and descriptions of the petitioner, and of all the persons to whom such order is intended to relate, and shall also state the nature of the guardianship or trust, and how created, of the property to which the trust relates, and the sub-substance of the order which the petitioner seeks to obtain.

RULE 4. Application for injunction.

Where any person intends to apply under the 8th clause of the first section of the Act, for an order in the nature of an injunction (except as is provided in Order XII. for urgent cases), he shall deliver at the office of the registrar a notice of his intention to apply for the same, together with as many copies thereof as there are persons upon or against whom such order is intended to be obtained, and he shall state in such notice his own name, address, and description, and, so far as he can, the names, addresses, and descriptions of all such persons, and also the substance of the order which the petitioner seeks to obtain.

[RULE 6. 30 & 31 Vict. c. 142, s. 24.

Any person desiring to pay money, transfer stock, or deposit security in trust to attend the orders of any County Court, under s. 24 of 30 & 31 Vict. c. 142, shall file with the registrar of the County Court having jurisdiction in the matter an affidavit, entitled in the matter of the last Act, and of the particular trust, and setting forth:

1. His own name, address, and description:
2. The place where he is to be served with any peti-

tion or summons, or any notice of any proceeding or order of the Court relating to the trust fund:

3. The amount of money, stock, or security which he proposes to pay, transfer, or deposit in trust to attend the orders of the Court:
4. A short description of the trust or of the instrument creating it:
5. The names, addresses, and descriptions of the persons interested in or entitled to, or claiming to be interested in or entitled to, the fund, to the best of the knowledge and belief of the trustee:
6. The submission of the trustee to answer all such inquiries relating to the application of the money or stock paid in or transferred or security deposited as the Court may think proper to make or direct.

RULE 7. Form of affidavit. The affidavit may be in the form set out in the schedule to these orders, with such variations as each particular case may require.

RULE 8. Endowment on affidavit. Immediately on the receipt by the registrar of the affidavit, he shall indorse thereon a memorandum of the day on which the same was received by him, and when such affidavit shall be so indorsed, it shall be taken for all purposes to have been duly filed on the date so indorsed thereon.

RULE 9. Certificate of registrar. The persons filing the affidavit, or any of them, may apply to the registrar to give to them a certificate entitled in the matter of the Act 30 & 31 Vict. c. 142, and of the particular trust, and under the seal of the Court, certifying that the affidavit has been filed, and such certificate may be in the form set out in the schedule to these orders, with such variation as each particular case may require.

RULE 10. Payment of money. In the case of money, the persons filing the affidavit, or any of them, may, upon the receipt of the beforementioned certificate, pay the money into a Post Office Savings Bank, under s. 24 of 30 & 31 Vict. c. 142, and obtain from the officer of the bank a *receipt for the same*, and shall forthwith leave the said receipt with the registrar, and the registrar shall accordingly indorse thereupon a memorandum of the day on which the same was received by him, and when such receipt shall be so indorsed, it shall be taken for all purposes to have been duly recorded on the date so indorsed thereon.

In the case of stocks, the persons filing the affidavit, or any of them, may, upon the receipt of the before-mentioned certificate, transfer the stocks into the names of the treasurer and registrar of the County Court mentioned in the said certificate, in trust to attend the orders of the Court, and shall forthwith leave the transfer ticket with the registrar, and the registrar shall immediately indorse thereon a memorandum of the day on which the same was received by him, and when such transfer ticket shall be so endorsed, it shall be taken for all purposes to have been duly recorded on the day so indorsed thereon. RULE 11. Transfer of stock.

In the case of security, the person filing the affidavit may forthwith deposit the security with the registrar in the name of the treasurer and registrar, in trust to attend the orders of the Court, and the registrar shall immediately indorse on the affidavit a memorandum of the day on which the security was deposited with him. RULE 12. Deposit of security.

The registrar shall, within twenty-four hours after the deposit of the security, send notice thereof by post to the treasurer of the Court, stating therein the particulars of the deposit, which notice may be in the form in the schedule, with such variations as each particular case may require. RULE 13. Notice of to treasurer of deposit.

Where there is a County Court in which there is not a treasurer, the transfer or deposit shall be made into the name of the registrar and of the superintendent of the County Court Department of the Treasury for the time being. RULE 14. Where no treasurer.

Immediately after the recording of the receipt or transfer ticket, or the deposit of the security, the registrar shall give to the persons paying in the said money, or transferring the said stocks or depositing the security, an acknowledgment or certificate of such payment or transfer or deposit, and such acknowledgment or certificate may be in the form set out in the schedule to these rules, with such variations as each particular case may require. RULE 15. Acknowledgment of payment.

Immediately after the recording of the receipt or transfer ticket, or giving a certificate of deposit of security, the registrar shall cause the necessary entry to be made in "The Suits and Proceedings in Equity book," including the *title of the particular trust,* and the *amount of money or stock paid or transferred, or security deposited,* and the names and addresses of the RULE 16. Entries in books, etc.

person or persons making such payment, transfer, or deposit, and the names of every person stated in the affidavit to be, or to claim to be interested in or entitled to such money or stock, and their addresses and descriptions, as given in the affidavit; and the registrar shall forthwith, by post, send to each of such last-mentioned persons, to the addresses given in the affidavit, a notice of the said payment, transfer, or deposit, which notice shall be under the seal of the Court, and may be in the form set out in the schedule to these rules, with such variations as each particular case may require.

RULE 17. Who may petition for order as to fund.

Any person interested in or entitled to the fund, or (if need be, but not otherwise) the trustee, may apply by petition, respecting the investment, paying out, or distribution of the fund or income thereof, and the petition shall be filed at the office of the registrar; and the petitioner shall leave thereat, where the petition relates to the income only of the fund, as many copies thereof as there are trustees and persons, other than the petitioner, interested in the due execution of the trust so far as regards the income only, and in all other cases as many copies thereof as there are trustees and persons, other than the petitioner, interested in the due execution of the trust, and he shall state in such petition his own name, address, and description, and a place where he may be served with any petition, or notice of any proceeding or order of the Court, relating to the said fund, and also the names, addresses, and description of the other persons interested, so far as he is able, the nature of the trust, and how executed, the trust property, and the substance of the order which he seeks to obtain.

RULE 18. Notice to trustees.

Unless the judge shall otherwise direct, the trustee shall be served with notice of every application made to the Court respecting the fund or the income, by any person beneficially entitled thereto.

RULE 19. When trustee to pay costs.

Where a trustee shall have availed himself of the provisions of s. 24 of 30 & 31 Vict. c. 142, without sufficient reason, the judge may direct such trustee to bear his own costs, and pay the costs of any other parties, or to bear and pay any part of such respective costs, as the judge shall think fit.

RULE 20. Time of filing petitions and giving notices.

Under this order petitions shall be filed and notices shall be delivered at the office of the registrar seven days before the sitting of the Court at which the petition is to be heard or application made.

The registrar, upon receiving any such petition or notice and the copies thereof, shall issue the copies under the seal of the Court to the bailiff for service upon the respective persons to whom they are addressed, together with a notice, signed by himself and under the seal of the Court, informing them of the day and hour on which the petition or application will be heard, and that if they do not attend, either in person or by their attorneys, such order will be made and proceedings taken as the judge may think just and expedient. Rule 21. Registrar to issue notices.

The bailiff of the Court shall, four days at least before the hearing, serve all copies of such petitions and notices. Rule 22. Service of petitions and notices.

Upon the hearing of any petition or application under this order, unless the judge shall otherwise direct, the facts relied upon in support of or in opposition to such petition or application shall be proved by affidavit. Rule 23. Facts may be supported by affidavit.

Where the judge makes an order upon such petition or application, the registrar shall, as soon thereafter as conveniently may be, draw up, seal, and file such order. Rule 24. Registrar to draw up order.

The preceding orders relating to suits shall, in all cases where they are applicable, be construed as extending to proceedings under this order. Rule 25. Orders as to suits to extend to proceedings.

Order XII.—Suits and Proceedings.

Ex parte Applications.

Wherever in any suit or proceeding it shall become necessary to secure the possession of any property, or to obtain security from any person for any moneys in his possession, or to enforce the deposit or the payment into Court thereof pending litigation, or the immediate sale of any goods or chattels, and the deposit or payment into Court of the purchase-money thereof, or to obtain an order in the nature of an injunction, any party may apply *ex parte* to the judge, either in or out of Court, upon affidavits setting forth the facts, rendering such order immediately necessary, and upon such application the judge may either make an order absolute in the first instance, or make an order to be absolute at any time to be ordered by him, unless cause be shown to the contrary, or may make such other order or give such directions in the matter as the judge may think fit, and may order immediate execution. Rule 1. Peremptory motions.

The draft of all orders under the foregoing rule shall be prepared beforehand by the registrar of the Court in Rule 2. Orders, how drawn.

which such suit or proceeding is pending, and shall be presented by the party when he makes such application to the judge to settle and sign.

Rule 3. Orders, how drawn and executed.

The draft so signed shall be transmitted by the applicant to the registrar of the Court in which the suit or proceeding is pending, who shall draw up the order in conformity therewith, and seal and file the same, and issue a copy thereof under the seal of the Court to the bailiff for service, and execution shall be issued thereon, as by the order is directed.

Order XIII.—Suits and Proceedings.

Amendments.

Rule 1. Amendments 15 & 16 Vict. c. 86, ss. 49 and 53.

The judge may, at or during the hearing, and before a final decree or order be made in any suit or proceeding under the Act, exercise all powers of amendment mentioned in s. 57 of the 19 & 20 Vict. c. 108, (*a*) so far as the same may be applicable to suits and proceedings in Equity, and also all the powers and authorities of a judge of the High Court of Chancery; and the rules relating to amendment in actions shall apply, so far as they are applicable, to all suits and proceedings in Equity.

Order XIV.—Suits and Proceedings.

Affidavits.

Rule 1. Affidavits to be expressed in the first person.

All affidavits shall be expressed in the first person of the deponent.

Rule 2. Sources of knowledge to be stated.

All affidavits shall state the deponent's age, occupation, quality, and place of residence, and also what facts or circumstances deposed to are within deponent's own knowledge, and his means of knowledge, and what facts or circumstances deposed to are known to, or believed by him by reason of information derived from other sources than his own knowledge, and what such sources are.

Rule 3. Costs of affidavits when disallowed.

The costs of affidavits not in conformity with the last two preceding rules shall be disallowed on taxation, unless the Court shall otherwise direct.

Rule 4. Filing of affidavits.

Before any affidavit is used it shall be filed in the office of the registrar.

Rule 5. Erasure, blotting,

No affidavit in which there is any knife erasure, or which is blotted so as to obliterate any word, or which

(*a*) See 'County Court Practice and Evidence,' third edition, p. 111.

is illegibly written, or so altered as to cause it to be illegible nor any affidavit in which there is any interlineation, unless the person before whom the same is sworn shall have duly authenticated such interlineation with his initials in such manner as to show that such interlineation was made before it was sworn, shall be filed or used in any suit or proceeding. Interlineation, etc. in affidavits.

Order XV.—Suits and Proceedings.

Rehearing.

No decree or order once made shall be reheard unless in any case in which the judge, on special grounds, shall think such rehearing necessary, and then only on such terms as the judge may think just. Rule 1. Rehearing to be allowed on special grounds only.

Order XVI.—Suits and Proceedings.

Enforcement of Decrees and Orders.

On the application of the party entitled to the benefit of the decree or order, the registrar shall issue to the bailiff a copy of such decree or order under the seal of the Court with a notice to the party to be bound indorsed thereon, and the bailiff shall forthwith serve the same upon the party to whom such notice is addressed. Rule 1. Service of Decree or Order.

No process shall issue to enforce any decree or order, unless by leave of the judge, until three days after a copy thereof under the seal of the Court shall have been served upon the party to be bound thereby. Rule 2. When execution may issue.

Where any decree or order is made for the payment of money into Court or by one party to another, the registrar shall, after the expiration of the time, if any, appointed by the decree or order for the payment thereof, and after the expiration of the time limited by this order, upon application by the person having the conduct of the suit, or by the payee, issue to the bailiff of the Court a writ of *fieri facias* as a warrant of execution, as provided by s. 94 of 9 & 10 Vict. c. 95 (*a*). Rule 3. Warrant of fi. fa.

Where a decree or order made in any suit or proceeding for the delivery up to any person of lands or tenements, goods or chattels, either as owner thereof, or to be sold, or to be held in possession until an order is made as to the disposition thereof, the registrar shall, upon the application of the person entitled to such possession, issue to the bailiff either a warrant of possession, or warrant of assistance, as the case may require. Rule 4. Warrant of possession or assistance.

(*a*) See 'County Courts Practice and Evidence,' third edit. p. 131.

RULE 5. Service of orders in the nature of an injunction.

Where an order in the nature of an injunction has been made, whether made *ex parte* or not, the registrar shall, if the party by whom it was obtained desires to have the same served by his attorney, issue for service a copy of such order, under the seal of the Court, to such party.

RULE 6. Where a person makes breach of an order in the nature of an injunction, notice to be served upon him to show cause why he should not be committed.

Where any breach of an order in the nature of an injunction shall have been made, the registrar shall, upon the application by the person having the conduct of the suit, issue to the high bailiff or to such person for service by his attorney, a notice under the seal of the Court, requiring the person who shall have been guilty of the breach of the said order to appear at a Court, to be held on a day to be named therein, to show cause why he should not be committed for contempt for having disobeyed the said order.

RULE 7. Where a person neglects to obey a decree or order, notice to be served on him to show cause why he should not be committed.

Where any person is required by any decree or order to pay money or do an act within a certain number of days after service of the copy of the decree or order, and such person shall not have paid such money or done such act within the time mentioned therein, the registrar shall, upon application by the person having the conduct of the suit, issue to the high bailiff, or to such person for service by his attorney, a notice under the seal of the Court, requiring the person who shall have neglected to obey the decree or order to appear at a Court to be held on a day to be named therein, to show cause why he should not be committed for contempt in having neglected to obey such decree or order. Provided always, a party shall not by proceeding under this rule be precluded from enforcing the order by warrant of execution or any other process of the Court.

ORDER XVII.—FUNDS IN COURT.

RULE 1. Registrar's accounts to be audited.

The accounts of a registrar in Equitable Proceedings shall be examined and audited by the treasurer in the same manner as his accounts in other proceedings are now or shall be examined and audited.

RULE 2. Payment into Court.

Where a party is directed to pay money into Court, he shall attend and pay the same into the office of the registrar, and obtain a receipt for the amount; and the registrar shall, unless otherwise ordered by the judge pay the same into a post-office savings bank, in accordance with the provisions of section 26 of 30 & 31 Vict. c. 142.

Rule 3. Entry of payment into Court and payment of interest.

The registrar shall enter in the "cash book" and "Ledger for Equitable Proceedings" all sums so paid to the account of the suit or matter, in which it is paid, and where the interest of any fund, paid into a Post-Office Savings' Bank, has been directed to be paid to any person, the registrar shall pay the same half-yearly out of any general moneys in his hands.

Rule 4. Registrar to transmit bank book to Postmaster-General.

In the first week of January in each year the registrar shall transmit to the Postmaster-General his bank book, and upon its return he shall send a letter, in the form n the schedule, to the Commissioners of the Treasury requesting them to authorize the Postmaster-General to allow him to draw out a sum equal to the interest which he may have paid to persons during the then past year, and shall apportion the same and carry the proportion to the account of each fund on which he has paid interest as aforesaid.

Rule 5. Drawing out of money from savings bank.

The registrar wherever he shall be directed by the Court to draw out of a Post-Office Savings Bank the fund or part of the fund in any suit or matter, he shall send a letter to the Commissioners of the Treasury in the form in the schedule.

Rule 6. Interest on investments.

Where money has before the 1st January, 1868, been invested in stock and the investment is in the names of the treasurer and registrar alone, the registrar shall from time to time receive the dividends of all the funds so standing in their names, and shall re-invest the dividend in the same names, except where and so far as the Court shall otherwise direct, and shall apportion the amount so re-invested in his books to the right accounts.

Rule 7. Service of order under s. 5 of the Act.

Where any order has been made upon any person to pay to the Accountant-General in Chancery any sum of money under section 5 of the Act, such order shall be drawn up by the registrar and issued to the bailiff of the Court, by whom the same shall be served personally upon the person ordered to make the payment.

Rule 8. Where default made in payment to Accountant-General of the Court of Chancery.

Where default shall be made in the production of the certificate of the Accountant-General the registrar shall give notice in writing to the judge of the fact of such default, and the judge may thereupon direct a warrant of execution to issue in accordance with section 5 of the Act.

Rule 9. Married women.

Where any married woman is interested in any principal money, stocks, shares, or securities exceeding in value £200, or £10 in annual payments, she shall be ex-

amined by the judge apart from her husband, to ascertain whether the same shall be paid to him or made the subject matter of a settlement, but if she be under age the Court shall order a proper settlement to be made.

Order XVIII.—Transfer of Proceedings to or from Court of Chancery.

Rule 1. Transfer to Court of Chancery where subject matter exceeds the amount to which jurisdiction is given by Act.

If during the progress of any inquiry under order of the Court it shall be made to appear that the subject matter of the suit or proceeding exceeds the amount to which the jurisdiction of the Court is limited, the registrar may proceed with the particular account or inquiry which is then before him, unless he thinks it inexpedient so to do, but he shall at the next sitting of the Court present a certificate of the state of the suit and proceedings, and if the judge shall be of opinion that such excess exists, he shall make an order for the transfer of the suit or matter to the Court of Chancery; and the registrar shall make and file with the record a copy of such certificate and order, and shall transmit the original, together with the order of the judge thereupon, under the seal of the Court, by post or otherwise, to the office of the Clerk of Records and writs in Chancery, or to such other office or officer as the Lord Chancellor may by general order direct, and shall also send notice, by post or otherwise, of the fact, to all parties and persons entitled to be served with a copy of the decree.

Rule 2. Transfer from Court of Chancery under section 8 of 30 & 31 Vict. c. 142.

Where any suit or proceeding is transferred under section 8 of the 30 & 31 Vict. c. 142, to a County Court, the plaintiff shall lodge with the registrar thereof the order of transfer, together with all original documents in the suit or proceeding in his possession, and also a statement of the names and addresses of the several parties to the suit, and their attorneys, and the defendant shall lodge all original documents in the suit or proceeding in his possession, and either party shall from time to time lodge office copies of any further documents the judge or registrar may require.

Rule 3. Indorsement.

The registrar shall forthwith indorse on the order of transfer the date on which the same was lodged.

Rule 4. Registrar to apply to judge for instructions.

When the order of transfer is lodged, the registrar shall forthwith apply to the judge for directions as to the further steps in the suit or proceeding, and thereupon the judge may give such directions for carrying on the suit or proceeding as he may think fit, or he may

appoint a time to hear and determine any matters in such suit or proceeding, and direct the registrar to summon all parties to appear on the day so appointed. And the judge shall also, if he think fit, order the registrar to give notice to the parties to the suit or proceeding, or any of them, that the order of transfer has been lodged.

Order XIX.—Appeal.

Rule 1. Appeal to be by case. 13 & 14 Vict. c. 61, ss. 14, 15 and 16, and ss. 18 & 19 of the Act.

Where any party desires to appeal under section 18 of the Act against the determination or direction of a judge of a County Court, such appeal shall be had in accordance with the provisions of section 15 of 13 & 14 Vict. c. 61, upon a case to be stated for the opinion of the Vice-Chancellor appointed in that behalf by the Lord Chancellor.

Rule 2. Notice of appeal.

The notice of appeal shall be in writing, and shall be signed by the appellant, his counsel or attorney, and such notice shall be sent, together with the statement of the grounds, by post or otherwise, to the registrar as well as to the successful party.

Rule 3. Proceedings not to be stayed unless Vice-Chancellor or judge otherwise order.

The pendency of an appeal shall not operate as a stay of proceedings, but the Vice-Chancellor to whom such appeal is made, or the judge from whose decree or order the appeal is made, may stay the proceedings pending the appeal, on such terms as to giving security or otherwise as to such Vice-Chancellor or judge may seem fit.

Rule 4. Case to be signed by judge.

The appellant shall prepare the case for appeal, and all cases on appeal shall, unless the judge shall otherwise order, be presented to him for signature at the Court held next after the parties shall have agreed upon the same; and if the judge approves thereof it shall be signed by him, and sealed with the seal of the Court; but where the judge does not approve of the case submitted to him, both parties shall be summoned to attend him where and when the judge shall appoint, and at the place and time so appointed both parties shall be heard as to the form of the case, and the judge shall finally settle and sign the same, and it shall then be sealed by the registrar.

Rule 5. Where parties do not agree on case, judge to settle same.

Where the parties do not agree upon the form of the case to be stated, the appellant shall lodge with the registrar the draft case prepared by him, and the registrar shall give notice to the parties that the same has been so lodged, and will, on a day to be named in the notice, be presented to the judge for his signature, and

on such day the parties may appear before the judge, who shall determine the form of the case, and finally settle and sign the same, and it shall then be sealed by the registrar.

RULE 6. Copy of case deposited with registrar.

When the case shall be so signed and sealed, a copy thereof shall be deposited with the registrar, and another sent by post or otherwise by the appellant to the successful party within three days next after the time of signing and sealing the same, and if the appellant do not comply with this rule the successful party may proceed upon the decree or order unless the judge shall otherwise direct.

RULE 7. Case to be transmitted.

The appellant shall, within three days next after the case has been signed and sealed, transmit the same with a copy thereof under the seal of the Court, by post or otherwise, to the office of the Clerks of Records and Writs in Chancery, or to such other office or officer in the Court as the Lord Chancellor may by general order direct, and shall give notice, by post or otherwise, to the successful party that he has done so; in default whereof the successful party may proceed on the decree or order, and shall, on the application to the Court, be entitled to such costs as he shall have incurred in consequence of the appellant's proceedings; provided that, instead of proceeding on such decree or order, the respondent, if he think fit, may, within twenty-eight days from the signing and sealing of the case, transmit it in the manner described, and give the like notice to the appellant of such transmission.

RULE 8. If appeal not prosecuted, successful party to proceed.

If, after the case has been transmitted, the appellant do not prosecute his appeal, the Court of appeal may dismiss the same for want of prosecution, and thereupon the decree or order appealed from may be prosecuted and enforced as if there had been no such appeal, and the respondent in the appeal shall be entitled to all costs he may have incurred by reason of the appeal, to be recovered as costs in the Court below.

RULE 9. Entering judgment on appeal.

When the Court of Appeal shall have made a decree or order, either party may deposit the same or an office copy thereof with the registrar of the County Court, and upon being so deposited such decree or order shall be filed and may be enforced as if it had been made by the County Court.

RULE 10. Appeal to Lancaster

All the rules in this order shall apply to appeals under section 19 of the Act to the Court of Chancery of

the County Palatine of Lancaster, and the Vice-Chancellor thereof, except that in the case when signed and sealed shall be transmitted to the registrar of that Court. Court of Chancery.

Order XX.—Duties of Registrar.

Rule 1. Registrar to keep books, and enter proceedings therein.

The registrar shall keep a book to be called "The Suits and Proceedings in Equity Book," and shall enter and number in such book each suit or proceeding consecutively in the order in which they are entered, and shall also enter therein a note of all documents filed and steps taken in such suit or proceeding.

Rule 2. Documents to be distinguished by the number of the plaint and letters.

Upon the filing of any document it shall be distinguished by the number of the plaint or petition in respect of which it is filed being indorsed thereon, and it shall be further distinguished from other documents filed in the suit or proceeding by placing after the number a distinctive letter of the alphabet.

Rule 3. Duty of registrar when he rejects affidavits, or where documents are imperfect.

Where a registrar rejects an affidavit under Order XIV. he shall give notice, by post or otherwise, to the party offering the same for filing, and of the reasons for such rejection; and where any other document is so imperfect upon the face thereof, or by reason of having blanks therein, that it cannot be easily read or understood, the registrar may refuse to file, and may return the same by post or otherwise, to the party offering the same, to be re-written, or the blanks filled up.

Rule 4. Summonses, etc. to be sealed.

Before any summons, notice, or other document, or any copy thereof, shall be issued by the registrar, the same shall be sealed with the seal of the Court.

Rule 5. Registrar to appoint time and place for inquiries and taking accounts.

Where the registrar is required by any decretal order to make inquiries or to take accounts, he shall appoint some day, being not less than twenty-one days from the date of such order, to sit in his office or at the Court to hear and determine all matters relating to such inquiry and accounts, and he shall forthwith prepare and insert advertisements in conformity with such order, stating the time, place, and purpose of such sitting, and shall insert the same fourteen days previous to such sitting.

Rule 6. Hearing before registrar.

Upon the day so appointed the registrar shall sit at the time and place appointed, and shall hear all parties interested, their counsel or attorneys.

Rule 7. Further time for certificate.

Where a registrar is not prepared to certify to the Court on the day mentioned in the order he shall apply to the judge for an extension of time, and state the

reason for making the application, and he shall give notice, by post or otherwise, to the parties of the enlargement of the time and of the day on which he is to certify.

Rule 8. Registrar to to retain money to abide result of appeal.

Whenever a notice for appeal is given, the registrar shall detain the proceeds of any execution which may then be in or may come into his hands pending such appeal, to abide the event of such appeal, unless the judge shall otherwise order.

Rule 9. Custody of securities.

The registrar shall comply with all regulations which may from time to time be made by the Commissioners of Her Majesty's Treasury for the safe custody of any securities deposited with them under section 24 of 30 & 31 Vict. c. 142.

Order XXI.—Duties of High Bailiff.

Rule 1. As to sale of personal property.

Where any personal property is directed to be sold by auction, the high bailiff shall superintend the sale; and where the property is to be sold by private contract he shall carry out the directions of the Court in respect of such sale.

Rule 2. Services and Executions.

The high bailiff shall serve all documents issued to him by the registrar for service, and execute all warrants.

Rule 3. Possession.

Where a warrant shall direct the high bailiff to take possession of, without selling or delivering to a party, any goods or chattels, he shall make or cause to be made an inventory or appraisement of the goods or chattels which he may take into his possession, and may, upon receiving as a deposit the amount of such appraisement or sufficient security, to be approved by the registrar, for the safe custody, and for the delivery up of possession upon request, of such goods and chattels, relinquish the possession thereof on condition that the same shall be re-delivered to him or held to abide the order of the Court.

Rule 4. Payment over of money.

All moneys coming into the hands of the high bailiff shall be paid over by him to the registrar to the credit of the suit or proceeding in which the same was so received by him within twenty-four hours after he shall have received the same.

Orders XXII.—Duties of Receiver.

Rule 1. Receiver to give security.

Every receiver appointed by the Court, other than the high bailiff, shall give such security by bond to the

registrar for the faithful discharge of his duties, and the payment over of money, as the Court shall direct.

Rule 2. His accounts to be audited by registrar and when.

The receiver shall submit to the registrar, and the registrar shall audit, the accounts of the receiver, which need not be in any particular form, as soon as conveniently may be after the receipt or realization of the assets, and immediately after such audit shall pay over to the registrar the balance found thereby to be in his hands.

Rule 3. To produce voucher and if required verify on oath.

The registrar may require any receiver to produce any receipt, accounts, and vouchers necessary for verifying the accounts, and may disallow any item not proved to his satisfaction, and may, if he shall think fit, require any receiver to verify such accounts and vouchers upon oath.

Rule 4. To produce account for audit upon notice.

The receiver shall, at any time before the complete realization of the assets, produce his accounts to be audited in manner provided by this order, upon receiving seven days' notice in writing from the registrar so to do, and such notice may be sent by post or otherwise to the address of the receiver.

Rule 5. Audit once a year.

Where the duties of the receiver are continuous, no longer period than one year shall in any case be allowed to intervene between each audit.

Rule 6. Parties need not attend audit.

In no case shall it be necessary for any party to attend at the audit of the receiver's account; but where a party is dissatisfied with a receiver's account he may apply to the Court or registrar for a revision of the registrar's allowances.

Rule 7. Court may order income to be paid direct to parties.

The Court may order the receiver to pay over, at such time or from time to time as it shall see fit, to the party entitled to the beneficial interest therein, or to the guardian of any infant, any yearly or other accruing rents or interest instead of paying the same into Court, and to take credit for such payments in his accounts when audited.

Order XXIII.—Practice.

Rule 1. Proceedings may be wholly or partly printed.

All plaints, petitions, statements, and documents whatsoever in any suits or matter under the Act which are required to be filed shall be on foolscap paper, and may be wholly or partly printed or written, and dates and sums occurring therein may be expressed in figures.

RULE 2. Documents to be sealed.

All judicial or official documents in any suit or proceeding, and all copies thereof respectively issued by the Court, shall be stamped by the registrar with the seal of the Court.

RULE 3. Service.

Every document the mode of serving which is not specially defined by these orders, may be served, and the service thereof may be proved in conformity with the practice that has heretofore prevailed in the County Courts as to the service of summonses, excepting so far as the same relates to the time of service.

RULE 4. Change of attorney.

Where any party to a suit or proceeding changes his attorney, he shall give notice in writing of such change to the registrar, stating the name or firm and place of business of the new attorney, and the registrar shall file the notice.

RULE 5. Setting down for hearing.

On the entry of a plaint or filing of a petition, the registrar shall set down the suit or matter for hearing by in the case of a plaint, making the summons returnable on a day certain, and, in the case of a petition, inserting in the notice the day on which the matter is to be heard.

RULE 6. Days for equity sittings.

The times of the sitting of a County Court in matters of equity shall be those appointed for the transaction of the general business of the Court, unless the judge shall otherwise order and shall appoint a special day or days for a sitting of the Court in matters of equity.

RULE 7. Where Christian name unknown.

Where any party to any suit or proceeding is unacquainted with the Christian name of any person whose name he desires to insert in any plaint, proceeding, or document, he may describe such person by his surname or by his surname and the initial of his Christian name or by such name as he is generally known by.

RULE 8. Copy of documents for use of judge.

Where any proceedings or documents are filed an extra copy, in addition to the copies to be delivered under these orders, shall be left with the registrar for the use of the judge.

RULE 9. Copies of proceedings to be forwarded to judge.

The registrar shall transmit by post, prepaid, to the judge, five days before the sitting of the Court, all copies of proceedings and documents left for his use under these orders.

RULE 10. Registrar to prepare all copies.

Copies of all proceedings or documents shall be prepared by the registrar for any person requiring the same, upon payment of the costs of such copies when the order for the same is given.

Where by these orders any act is to be, or may be done by any party to a suit or proceeding, such act may be done either in person or by his attorney.

Rule 11. Acts may be done by counsel or attorney.

Where a party acts by attorney, service of any proceeding or document upon such attorney, or delivery of the same at his office, or sending the same to him by post, shall be good service upon the party for whom such attorney acts, as upon the day when the same is so served or delivered, or upon which in the ordinary course of post it would be delivered, except in cases where by these orders personal service upon a party is required.

Rule 12. Service on attorney sufficient, except where personal service is required.

Any proceeding or document may, by leave of the registrar, be served by the attorney of the party requiring to effect such service; but the costs of such service, and proof thereof, shall not be allowed, except by order of the judge.

Rule 13. Service may, by leave of the registrar, be effected by the attorney.

Where by reason of the absence of any party, or from any other sufficient cause, the service of any summons, notice, proceeding, or document cannot be made, or ought in the opinion of the judge to be dispensed with, the judge may wholly dispense with such service, or may, at his discretion, order any substituted service or notice by advertisement or otherwise in lieu of such service.

Rule 14. Substituted service.

The judge shall order in what newspaper any advertisements which may from time to time be ordered in any suit or proceeding shall be inserted; and when there is no fund in Court, the expense of such advertisement shall be paid to the registrar by the party requiring the same before they are inserted.

Rule 15. Judge to order in what newspapers advertisements to be inserted and costs thereof to be prepaid.

All advertisements to be inserted in the London 'Gazette' shall be transmitted to the Registrar of County Court judgments in London, who shall cause them to be classified and inserted in lists under the direction of the Commissioners of Her Majesty's Treasury.

Rule 16. Advertisements in London Gazette.

The judge may order what party shall have the conduct of any suit or proceeding, or any part thereof, and may rescind or alter such order, or make new orders in that behalf, from time to time as he shall think fit.

Rule 17. Conduct of suit.

The judge may, if he think fit, enlarge or abridge any of the times fixed by these orders for taking any step, or filing any document, or giving any notice, in any suit or proceeding.

Rule 18. Court may enlarge or abridge periods mentioned in these orders.

Rule 19. Undertaking by next friend to pay costs.

Before the name of any person shall be used in any suit or proceeding as next friend of any infant, married woman, or other party, such person shall sign an undertaking, in the form given in the schedule, to be responsible for any costs to which the plaintiff or applicant may become liable in the course of the suit or proceeding, and such undertaking shall be annexed by the registrar to the plaint or petition.

Rule 20. Transfer of suits or proceedings from one Court to another in certain cases.

Where suits or proceedings shall be commenced in different Courts by parties in the same interest, such suits or proceedings shall be transferred to the Court in which the first plaint or petition was filed, and shall there be proceeded with in the same way in all respects as if they had been commenced in that Court.

Rule 21. Taxing officer.

The registrar shall be the taxing officer of the Court.

Rule 22. Interest on debts.

Creditors are to be entitled to interest in respect of debts as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of £4 per cent. per annum, from the date of the decretal order, and to costs of successfully proving such debts according to the scale of costs in that behalf.

Rule 23. Interest on legacies.

Interest is to be computed on legacies after the rate of £4 per cent. per annum, from the end of one year from the date of the testator's death, unless otherwise ordered or a different rate is directed by the will.

Rule 24. Decrees to be registered Sec. 15 of the Act.

A note of every decretal order or final decree made in any suit or of an order made on a petition shall be transmitted to the registrar of County Court Judgments in London, who shall register the same under the direction of the Commissioners of her Majesty's Treasury.

Rule 25.

Any person who may be in custody may apply to the registrar for his discharge therefrom, upon giving to the party at whose suit he was committed notice of his intention so to apply two days previous to his applying.

Rule 26. Forms.

All proceedings and documents may be in forms similar to the forms in the schedule to these orders where the same are applicable; and in cases where no forms are provided, parties shall frame the proceedings or documents, using as guides those contained in the schedule.

Rule 27. General practice rule.

The rules and forms and practice in actions in the County Courts shall, subject to these orders, be adopted with reference to suits and proceedings in Equity, so far as they shall be respectively applicable.

Order XXIV.—Interpretation.

In the orders in Equity the following words shall have the several meanings hereby assigned to them, over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such construction; (viz.): Rule 1. Interpretation.

(1.) The words "the Act" shall mean 28 & 29 Vict. c. 99:

(2.) The word "party" shall mean a party to a suit or proceeding; and "person" shall mean any person, whether a party to the suit or proceeding or not; and the words "person" or "party" shall include a body politic or corporate:

(3.) The word "affidavit" shall include statuteable affirmations and attestations upon honour, and the word "sworn" shall include affirmed according to the statute and attested upon honour:

(4.) Where any number of days is mentioned it shall mean "clear days."

(5.) The word "Court" shall mean the County Court having jurisdiction in the suit or proceeding, and the words "judge" and "registrar" shall respectively mean the judge and registrar of that Court.

ORDERS UNDER THE COMPANIES ACT, 1867; AND THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1862.

The general orders, rules, and forms of the High Court of Chancery regulating for the time being the mode of proceeding under "The Companies Act, 1862," shall be the orders, rules, and forms in all proceedings in the County Courts for the winding up of a society registered under "The Industrial and Provident Societies Act, 1862," or for the winding up of a company under "The Companies Act, 1867," so far as the same are applicable: Provided that, where it shall appear to the Court inconvenient that the Bank of England should be the bank used for the purposes mentioned in the order and rules, it shall be competent for the Court to name some bank to be used in lieu of the Bank of England. 25 & 26 Vict. cc. 87, 89. 30 & 31 Vict. c. 131.

SCHEDULE OF FORMS.

COMMON LAW AND EQUITABLE JURISDICTION, 1867.

FORMS IN COMMON LAW.

GENERAL FORM OF HEADING AND CONCLUSION OF ALL NOTICES AND ADMISSIONS.

No. of Plaint.
(*when known.*)

In the County Court of holden at

Between A.B. Plaintiff,
and
C.D. Defendant.

(*Seal.*) [Where sent or issued by Court.]

* * * * *

Dated this day of

Signature of registrar or of person sending notice.

NOTE.—*In all forms to be printed for the future the Number of Plaint and Number of Warrant should be in the right hand corner of the form, instead of the left hand corner, so as to facilitate reference where papers are joined together.*

GENERAL FORM OF HEADING AND CONCLUSION OF ORDERS, JUDGMENTS, AND WARRANTS.

No. of Plaint.

In the County Court of holden at

(*Seal.*)

Between A.B. Plaintiff,
and
C.D. Defendant.

* * * * *

Given under the seal of the Court, this day of 18 .

By the Court.

Registrar of the Court.

GENERAL FORM OF HEADING AND CONCLUSION OF AFFIDAVITS.

No. of Plaint.
(*when known.*)

In the County Court of holden at .

Between A. B., Plaintiff,
and
C. D., Defendant.

* * * * *

Sworn at in the County of
this day of ,
One thousand eight hundred and , before me

MEM. TO BE MADE ON ANY ORDER OR OTHER DOCUMENT SIGNED BY ONE JUDGE ACTING FOR ANOTHER.

This [*as the case may be*] was made [*or granted*] and signed by Judge Z., acting in the matter for Judge A., under the provisions of section 20 of "The County Courts Act, 1867."

MEM. TO BE PLACED AT FOOT OF EVERY SUMMONS, NOTICE, JUDGMENT, ORDER, WARRANT, OR ANY OTHER PROCESS OF THE COURT.

Hours of attendance at the Office of the Registrar [*Place of Office*] from Ten till Four o'clock, except on [*here insert the day on which the Office will be closed*], when the Office will be closed at One o'clock.

1.

UNDERTAKING BY NEXT FRIEND OF INFANT TO BE RESPONSIBLE FOR DEFENDANT'S COSTS.

No. of Plaint.

In the County Court of holden at .

I, the undersigned being the next friend of A. B., who is an infant, and who is desirous of entering a plaint in this Court against C. D. of, etc., hereby undertake to be responsible for the costs of the said C. D. of, etc., in such cause, and that if the said A. B. fail to pay to the said C. D., when and in such manner as the Court shall order, all such costs of such cause as the Court shall direct him to pay to the said C. D., I will forthwith pay the same to the Registrar of the Court.

Dated this day of 186 .

(Signed)

2.

AGREEMENT TO GIVE JURISDICTION TO A COUNTY COURT UNDER SECT. 23 of 19 & 20 VICT. c. 108.

We [*or* the respective attorneys of] A. B. of, etc., and C. D. of, etc., do hereby agree that the County Court of holden at shall have power to try an action to be brought by A. B.

against C. D. for under the provisions of section 23 of 19 & 20 Vict. c. 108.

Given under our hands this day of 186.

A. B. [*or* E. F., Attorney for A. B.]
C. D. [*or* G. H., Attorney for C. D.]

3.

AFFIDAVIT UNDER SECTION 2 OF 30 & 31 VICT. C. 142.

I, A. B., of, etc. [*or* agent for C. D.], make oath and say, that E. F. is indebted to me [*or* to the said C. D.] in the said sum of for , and I further say that the were sold and delivered to the said E. F. to be dealt with in the way of his trade of a

A. B.

4.

NOTICE TO REGISTRAR AS TO SERVICE OF SUMMONS UNDER SECTION 2 OF 30 & 31 VICT. C. 142, AND OF CONSENT TO PAYMENT BY INSTALMENTS UNDER THAT SECTION OR SECTION 28 OF 19 & 20 VICT. C. 108.

No: of Plaint.

In the County Court of holden at
Between A. B., Plaintiff,
and
C. D., Defendant.

Take notice that (*the plaintiff or his attorney, or some clerk or servant in the permanent employ of the plaintiff or of his attorney, will serve the summons in this action pursuant to the 30 & 31 Vict. c. 142, s. 2, and that) the plaintiff consents to accept payment of the debt and costs in this action on or before the day of 186 , [or by instalments of £ every month, until the debt and costs be paid, the first instalment to be paid on the day of 186].

Dated this day of 186 .

A. B., Plaintiff,
or
E. F., Plaintiff's Attorney.

To the Registrar of the Court,
and to the defendant.

5.

PLAINT-NOTE ON ENTERING PLAINT.

In the County Court of holden at
(*Seal.*)

No. of Plaint.

A. B., Plaintiff,
against
C. D., Defendant.

(*a*). Words within parenthesis to be omitted if *notice given* under section 28 of 19 & 20 Vict. c. 108.

Fees paid.

£	s.	d.

The above cause was entered this day, and will be tried at on the day of at o'clock in the noon.

Registrar of the Court.

Dated this day of 186 .

The hearing fees must be paid before the cause is called on.

[N.B.—IF YOU OBTAIN A JUDGMENT AGAINST THE DEFENDANT, ALL MONEYS ORDERED TO BE PAID THEREUNDER MUST BE PAID INTO COURT, AND MUST NOT BE RECEIVED BY YOU. (*See sect.* 45 *of* 19 & 20 *Vict. c.* 108.)

Bring this note when you come to the Court or to the office for any purpose connected with this cause. On the day of hearing bring all books, etc., necessary to prove your case.

Money will be paid out of Court ONLY *on production of this note, and upon your or your agent's* PERSONAL ATTENDANCE, *as the book must be signed by you or your agent, and no officer of the Court is allowed to sign it as your agent.*

If the defendant will sign a statement at the office of the registrar confessing that he owes you the money, or if you and he will sign an agreement at the registrar's office as to the amount due, and will consent to a judgment or, etc., you will only have to pay half the usual hearing fee.

If the debt or claim exceed five pounds you may have the cause tried by a jury, on giving notice in writing at the registrar's office three clear days before the hearing, and on payment of five shillings for the use of such jury.

Summonses for witnesses and for the production of documents may be obtained at the office, upon payment of the proper fees.]

6.

LETTER TO BE SENT WITH SUMMONS OUT OF DISTRICT. 9 & 10 Vict. c. 95, s. 62; 19 & 20 Vict. c. 108, s. 15.

No. of Plaint.

In the County Court of holden at

Sir,—I hereby request that you will serve the accompanying summons immediately, and return the enclosed copy of the same to me, with the affidavit of service required by section 62 of 9 & 10 Vict. c. 95. The defendant [or witness] is stated to reside at [*here insert the full address given in the summons*]—Your obedient servant,

Registrar of the Court.

To the High Bailiff of the County Court of holden at

7.

SUMMONS TO APPEAR TO A PLAINT.

No. of Plaint.

In the County Court of holden at

(*Seal.*)

Between A. B. [*address and description*], Plaintiff,

and

C. D. [*address and description*], Defendant.

(a) insert this when necessary.

(*a*) [Issued "by leave of the Court" or "by leave of the Registrar."]

You are hereby summoned to appear at a County Court to be holden at on the day of 18 , at the hour of in the noon, to answer the plaintiff, to a claim, the particulars of which are hereunto annexed. [*Where the amount of the claim does not exceed forty shillings, after* "claim" *strike out the words* "the particulars of which are hereunto annexed," *and state shortly the substance of the claim.*]

Dated this day of 18 .

Registrar of the Court.

	£	s.	d.
Debt or Claim - - - -			
Costs of plaint - - - -			
Attorney's costs - - - -			
Total amount £			

To the Defendant.

[N.B.—If you owe the money, and will consent to a judgment, you will save half the hearing fee.]

(*See back.*)

[*To be indorsed on the summons.*]

If you confess the Plaintiff's claim,—by doing which you will save half the hearing fee,—you should sign and deliver your confession to the registrar of the Court five clear days before the day of hearing; but you may deliver your confession at any time before the cause is called on, subject to the payment of any further costs which your delay may have caused the plaintiff to incur.

If you and the plaintiff can agree as to the amount due and the mode of payment, and will before the cause is called on for trial, sign a memorandum of such agreement at the registrar's office or before an attorney, you will save half the hearing fee.

If you pay the debt and costs, as stated in the summons, five clear days before the hearing, you will avoid further costs; but you may pay the same at any time before the cause is called on for trial, subject to the payment of any further costs which your delay may have caused the plaintiff to incur.

If you admit a part only of the claim, you may, by paying into the registrar's office the amount so admitted, together with costs proportionate to the amount you pay in, five clear days before the day of hearing, avoid further costs, unless the plaintiff, at the hearing, shall prove a claim against you exceeding the sum so paid.

If you intend to rely on a set-off, infancy, coverture, a statute of limitations, or a discharge under a bankrupt or an insolvent act, as a defence, you must give notice of such special defence to the registrar five clear days before the day of hearing,

and such notice must contain the particulars required by the rules of the Court; and you must deliver to the registrar as many copies of such notice as there are plaintiffs, and an additional copy for the use of the Court. If your defence be a set-off, you must, with each notice thereof, deliver to the registrar a statement of the particulars thereof. If your defence be a tender, you must pay into Court, before or at the hearing, the amount tendered.

If the debt or claim exceed five pounds you may have the cause tried by a jury, on giving notice in writing at the registrar's office three clear days before the hearing, and on payment of five shillings for the use of such jury.

Summonses for witnesses and for the production of documents will be issued upon application at the office of the registrar of the Court, upon payment of the proper fee.

[*N.B.—Where a plaintiff proposes to charge in the summons that the defendant has had assets and has wasted them, commence with the above form of summons, but naming defendant as executor or administrator of the deceased, and adding,*

"*And the plaintiff alleges that you the defendant have money,* "*goods, and chattels, which were the property of deceased,* "*at the time of his death, and which came to your hands as* "*executor* [or *administrator*] *of the said deceased, to be ad-* "*ministered, and if you have not, that you have withholden and* '*wasted the same, whereby you have become liable to satisfy the* '*plaintiff's claim and his costs herein out of your own goods.*"]

8.

AFFIDAVIT OF SERVICE OF SUMMONS.

9 & 10 Vict. c. 95, s. 62.

I one of the bailiffs of the County Court of holden at [*or* I the above-named plaintiff, or the attorney of the above-named plaintiff, or the clerk or servant of the above-named plaintiff, or of attorney at law], make oath and say, that I did on the day of 18 duly serve the defendant with a summons, a true copy whereof is hereunto annexed, marked A., by delivering the same personally to the defendant [or, *as the case may be, where summons not issued under s.* 2 *of* 30 *&* 31 *Vict. c.* 142.]

(*Indorse the copy-summons or other process thus:—This paper marked* "A" *is the paper referred to in the annexed affidavit.*)

9.

NOTICE OF NON-SERVICE OF A SUMMONS.

Take notice that the summons in this cause has not been served, for the following reason:—

Dated this day of 186 .

[Plaintiff.]

E. F., High Bailiff.

10.

NOTICE OF DOUBTFUL SERVICE OF SUMMONS.

Take notice, that the summons in this cause was served as follows [*here insert the Bailiff's return of service, as indorsed on*

the summons]. You must therefore be prepared at the hearing to satisfy the Judge that the summons has come to the Defendant's knowledge.

To the Plaintiff.

11.

19 & 20 Vict. c. 108, s. 28.

SUMMONS TO OBTAIN JUDGMENT BY DEFAULT ON PERSONAL SERVICE.

No. of Plaint.

In the County Court of holden at

(Seal.)

A. B. [*address, description*], Plaintiff.

and

C. D. [*address, description*], Defendant.

Take notice that unless at least six clear days before the [*day of appearance to summons*] you return to the registrar of this Court at [*place or office*] the notice given below, dated and signed by yourself, or your attorney or your agent, you will not afterwards be allowed to make any defence to the claim which the plaintiff makes on you, as per margin, the particulars of which are hereunto annexed; but the plaintiff may, without giving any proof in support of such claim, proceed to judgment and execution. If you return such notice to the registrar within the time specified, you must appear at a County Court to be holden at on the day of 186 , at the hour of in the noon, to answer the above claim, which will be heard on that day.

	£	s.	d.
Claim	...	...	...
Fee for plaint . .	...	...	...
Attorney's costs	...	...	...
Total amount of debts and costs	...	...	...

Dated this day of 186 .

Registrar of the Court.

To the Defendant.

NOTICE OF INTENTION TO DEFEND, OR TO OBJECT TO THE JURISDICTION OF THE COURT.

[*To be at foot of Summons.*]

No. of Plaint.

In the County Court of * holden at

* A. B. *v.* C. D.

I intend to defend this cause [*or* to object to the jurisdiction of the Court] on the ground or grounds [*here state the ground or grounds.*]

Dated this day of 186 .

(*a*) Defendant.

(* *To be filled in by Registrar previous to issue of summons.*)

(*a*) Here must be signed the name of Defendant, or of his attorney or agent, and in either of the last two cases the words "attorney for," or "agent for," must be added.

See back.

[*To be indorsed on the Summons.*]

If you pay the debt and costs, as per margin on the other side, into the registrar's office, before the day of hearing, and *without returning the notice of intention to defend, or to object to the Jurisdiction of the Court*, you will avoid further costs.

If you do not return the notice of intention to defend or object, but allow judgment against you by default, you will *save half the hearing fee*, and the order upon such judgment will be to pay the debt and costs forthwith [*or* by instalments, *to be specified, as in Plaintiff's written consent.*]

If you admit a part only of the claim, you must return the notice of intention to defend or object within the specified time; and you may, by paying into the registrar's office the amount so admitted, together with costs proportionate to the amount you pay in, six clear days before the day of hearing, *avoid further costs*, unless the plaintiff at the hearing shall prove a claim against you exceeding the sum so paid.

If you intend to rely on a set-off, infancy, coverture, a statute of limitations, or a discharge under a bankrupt or an insolvent Act, as a defence, you must, in addition to the notice of intention to defend, give to the registrar notice of such special defence six clear days before the day of hearing; and such last-mentioned notice must contain the particulars required by the rules of the Court; and you must deliver to the registrar as many copies of such notice as there are plaintiffs, and an additional copy for the use of the Court. If your defence be a set-off, you must, with the notice thereof, also deliver to the registrar a statement of the particulars thereof. If your defence be a tender, you must pay into Court, before or at the hearing, the amount tendered.

If you give such notice of intention to defend within the time specified you may, *if the debt exceeds five pounds*, have the cause tried by a jury, on giving notice in writing at the registrar's office three clear days before the hearing, and on payment of five shillings for the use of such jury.

Summonses for witnesses and for the production of documents by them will be issued upon application at the office of the registrar of this Court, upon the payment of the proper fee.

This summons must be served *personally* on the defendant twelve clear days before the day appointed for the hearing.

NOTE.—*This summons should be printed on a half-sheet of foolscap paper, so as to enable the "notice of intention to defend or object" to be torn off for transmission to the registrar.*

12.

NOTICE UNDER SECTION 29 OF 19 & 20 VICT. C. 108, AND (WHERE SERVICE NOT BY PLANTIFF) UNDER SECTION 2 OF 30 & 31 VICT. C. 142. 19 & 20 Vict. c. 108, s. 29.

You are hereby informed that the defendant has [*or* has not] been served with the summons issued in this action [*when he has been served add,* and that he has (*or* has not) given notice of his intention to defend the action [*end here in cases under first Act*] or object to the jurisdiction of the Court].

To the Plaintiff.

13.

18 & 19 Vict. c. 67.

SUMMONS UNDER "THE SUMMARY PROCEDURE ON BILLS OF EXCHANGE ACT, 1855."

No. of Plaint.

In the County Court of holden at

(Seal.)

Between A. B. [*address, description*], Plaintiff.

and

C. D. [*address, description*], Defendant.

You are hereby warned that unless within twelve days after the service of this summons on you inclusive of the day of such service, you obtain leave from the Judge of this Court, or, in his absence, from the registrar of this Court, to defend this action, the plaintiff may proceed to judgment and execution.

Dated this day of 186 .

Registrar of the Court.

To the Defendant.

[N.B.—*This summons must be served on the Defendant within six calendar months from the date thereof, and not afterwards.*]

Indorsement to be made on the Summons before Service thereof.

The Plaintiff claims £ for principal and interest [*or* balance of principal and interest], due to him as the payee [*or* indorsee] of a bill of exchange [*or* promissory note], of which the following is a copy [*here copy bill of exchange or promissory note, and all indorsements upon it*] and also for noting, and the sum of for court fees [and costs herein]. And if the amount thereof be paid to the registrar of the Court four days from the service hereof, no further proceedings will be taken.

Leave to defend may be obtained upon application at the office of the registrar of this Court, supported by affidavit, showing that there is a defence to the action on the merits, or disclosing facts showing that it is reasonable that the defendant should be allowed to defend the action.

Indorsement to be made on the summons after Service.

This summons was served by personally on [*the Defendant* or *the Defendants*] on the day of 186 .

14.

19 & 20 Vict. c. 108, s. 71.

CERTIFICATE OF DEPOSIT.

I do hereby certify that the plaintiff [*or* defendant] has paid into my hands the sum of £ [*or here state the proceeding which has rendered the deposit necessary*].

Dated this day of 186 .

Registrar of the Court.

15.

NOTICE OF SURETIES.

Take notice that the sureties whom I propose as my security

in the above cause [*here state the proceeding which has rendered the sureties necessary*] are [*here state the full names and additions of the sureties, whether housekeepers or freeholders, and their residences for the last six months, therein mentioning the county or city, places, streets, and numbers, if any.*]

Dated this day of 186 .

To the

16.

AFFIDAVIT OF JUSTIFICATION.

I of one of the sureties for the defendant, make oath and say, that I am a housekeeper [*or* freeholder, *as the case may be*], residing *describing particularly the county or city, the street or place and the number of the house, if any*], that I am worth property to the amount of £ [*the amount required by the practice of the Court*] over and above what will pay my just debts [*If security in any other action or for any other purpose, add,* and every other sum for which I am now security], that I am not bail or security in any other action or proceeding or for any other person [*or if security in any other action or actions, add,* except for C. D., at the suit of E. F., in the Court of in the sum of £ ; for G. H., at the suit of I. K., in the Court of in the sum of £ *specifying the several actions with the Courts in which they are brought and the sums in which he has become bound*] ; that this my property, to the amount of the said sum of £ [*and if security in any other action, etc.,* over and above all other sums for which I am now security as aforesaid], consists of [*here specify the nature and value of the property in respect of which the deponent proposes to become bondsman as follows,* stock in trade, in my business of carried on by me at of the value of £ , of good book debts owing to me to the amount of £ , of furniture in my house at , of the value of £ , of a freehold [*or* leasehold] farm of the value of £ situate at occupied by *or* of a dwelling-house of the value of £ situate at occupied by *or of other property, particularizing each description of property with the value thereof*], and that I have for the last six months resided at [*describing the place of such residence, or if he has had more than one residence during that period, state it in the same manner as above directed.*]

17.

BOND UNDER "THE SUMMARY PROCEDURE ON BILLS OF EXCHANGE ACT, 1855." 18 & 19 Vict. c. 67.

Know all men by these presents, that we, A. B., of, etc., and C. D., of, etc., and E. F., of, etc., are jointly and severally held and firmly bound to G. H., of, etc., in £ to be paid to the said G. H., or his certain attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this day of one thousand eight hundred and .

Whereas an action has been brought in the County

Court of holden at wherein the above-named G. H. is plaintiff, and the above bounden A. B. is defendant, on a certain bill of exchange [or promissory note] under "The Summary Procedure on Bills of Exchange Act, 1855."

And whereas leave has been duly given, according to the provisions of the said Act, to the said A. B., to defend the said action upon his giving security, to be approved by the registrar of the Court aforesaid, for the amount claimed in the said action and costs of trial thereof.

I approve of this bond. I.K., Registrar. (L. S.)

This bond requires a stamp.

And whereas the above-named C. D. and E. F., at the request of the said A. B., have agreed to enter into the above-written obligation for the purposes aforesaid, and the security intended to be hereby given has been approved of by the registrar of the said County Court, as appears by his allowance in the margin hereof: Now the condition of this obligation is such, that if the above-bounden A. B., C. D., and E. F. any or either of them, shall pay unto the said G. H., his executors, administrators, or assigns, the amount claimed in the said action, and the costs of the trial thereof, upon judgment being given for the plaintiff, then this obligation shall be void, otherwise shall remain in full force.

A. B. (L. S.)
C. D. (L. S.)
E. F. (L. S.)

Signed, sealed, and delivered by the above-bounden in the presence of

19 & 20 Vict. c. 108, s. 71.

NOTE.—*If a deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond, and will not require a stamp.*

18.

18 & 19 Vict. c. 67.

NOTICE OF LEAVE GIVEN TO DEFEND.

Take notice, that the defendant has obtained leave to appear at a County Court to be holden at on the day of at the hour of in the noon, to defend this action.

The defendant has obtained such leave on the ground set forth in an affidavit, a copy of which is hereunto annexed, [and has paid to me the sum claimed by you, to abide the decision of the Court] [*or* has given security for the amount claimed by you, and the costs of this action.]

19.

18 & 19 Vict. c. 67.

NOTICE TO THE DEFENDANT OF THE DAY ON WHICH CAUSE IS TO BE HEARD UPON LEAVE BEING GIVEN TO DEFEND.

Leave having been given to the defendant to defend this action, he is hereby informed that it will be tried at on the day of at the hour of in the forenoon.

20.

9 & 10 Vict. c. 95, s. 82.

NOTICE OF PAYMENT INTO COURT OF WHOLE CLAIM.

Take notice, that the defendant has paid into Court the full amount of your demand in this action, together with your costs therein.

[N.B.—*Upon your applying for the above amount, it will be necessary that you should produce the plaint-note given to you on the entry of the plaint.*]

21.

PARTICULARS OF PLAINTIFF'S DEMAND OR CAUSE OF ACTION IN ACTIONS OF CONTRACT ORDERED TO BE TRIED IN A COUNTY COURT UNDER 30 & 31 VICT. C. 142, S. 7.

Between A. B. [*address and description*]
and
C. D. [*address and description.*]

Being an action of contract commenced in Her Majesty's Court of at Westminster, and sent by order of a judge at chambers under section 7 of "The County Courts Act, 1867," to be tried in this Court [*here, where writ not specially indorsed, state the particulars of the plaintiff's demand or cause of action according to the facts, adding*] Above are the particulars of the plaintiff's demand [or cause of action],

Dated this day of 186 .

A. B., Plaintiff,
or
E. F., Plaintiff's Attorney.

To the Registrar of the Court
and to the Defendant.

22.

NOTICE OF TRIAL OF ACTION OF CONTRACT ORDERED TO BE TRIED IN A COUNTY COURT UNDER 30 & 31 VICT. C. 142, S. 7.

Being an action of contract commenced in Her Majesty's Court of at Westminster, and sent by order of a judge at chambers under section 7 of "The County Courts Act, 1867," to be tried in this Court.

Take notice that this action will be tried at a Court to be holden on the day of at o'clock in the forenoon.

Dated this day of 186 .

Registrar of the Court

To the Plaintiff and Defendant.

[*To the notice sent to defendant the registrar must annex a copy of the plaintiff's particulars of demand or cause of action where given.*]

23.

STATEMENT OF PLAINTIFF'S CAUSE OF ACTION IN ACTIONS OF TORT REMITTED UNDER 30 & 31 VICT. C. 142, S. 10, TO BE TRIED IN A COUNTY COURT.

In the County Court of holden at
Between A. B. [*address and description.*], Plaintiff,
and
C. D. [*address and description.*], Defendant.

Being an action of tort commenced in Her Majesty's Court of at Westminster, and remitted by order of the Honourable Mr. Justice [*or* Mr. Baron] under section 10 of "The County Courts Act, 1867," to be tried in this Court.

This action is brought:

Malicious prosecution.

A. For that the defendant maliciously and without reasonable or probable cause laid an information before E. F., a Justice of the Peace for the County of against the plaintiff for having feloniously stolen a bushel of wheat belonging to the

defendant, upon which charge the plaintiff was committed to the County Gaol at , and was there imprisoned two months, and the defendant afterwards maliciously and without reasonable or probable cause caused the plaintiff to be prosecuted, indicted, and tried at the last assizes for the said county upon the said charge, when the plaintiff was acquitted, and the prosecution came to an end, by reason whereof the plaintiff was injured in his person and character, and was put to expense in defending himself against the said charge; and the plaintiff claims £100 damages.

Illegal arrest.

B. For that the defendant wrongfully and unlawfully gave the plaintiff into the custody of a policeman, and caused him to be handcuffed, and to be imprisoned in a police station, and thence to be taken in custody to a police office, and there to be further imprisoned, whereby the plaintiff was put to expense in procuring his liberation from such imprisonment and in finding bail for his subsequent appearance before a justice of the Peace; and the plaintiff claims £30 damages.

Illegal distress.

C. For that the defendant, under a certain distress for rent due from the plaintiff to him, seized and sold more goods and chattels of the plaintiff both in quantity and value than were reasonably sufficient to satisfy the arrears of rent due, and the costs of the distress; and the plaintiff claims £20 damages.

Assault.

D. For that the defendant assaulted, beat, and wounded the plaintiff, in consequence whereof the plaintiff suffered much pain, and was confined to his bed, and put to expense in obtaining medical advice and attendance to cure him of the injuries inflicted by such beating and wounding; and the plaintiff claims £100 damages.

Libel.

E. For that the defendant falsely and maliciously wrote and published of and concerning the plaintiff the words following: "*he is a liar, a blackguard, and a scoundrel;*" and the plaintiff claims £200 damages.

Libe of Plaintiff in the way of his trade.

F. For that the defendant falsely and maliciously caused to be printed and published of and concerning the plaintiff in the way of his trade as a grocer, the words following: "Mr. A. B. *sands his sugar and dusts his pepper,*" whereby the plaintiff was injured in his trade, and lost the custom of several persons, particularly X., Y., and Z., who had before dealt at the plaintiff's shop; and the plaintiff claims £50 damages.

Slander.

G. For that the defendant falsely and maliciously spoke and published of and concerning the plaintiff the words following: "A. B. *is a thief, and stole Mr. Brown's ducks;*" and the plaintiff claims £30 damages.

Slander of Plaintiff in the way of his calling.

H. For that the defendant falsely and maliciously spoke and published of and concerning the plaintiff, in the way of his business and calling as a ratcatcher, the words following: "A. B. *is a great rogue, and instead of doing his best to kill the rats he encourages the breed, so that he may have more employment from the farmers,*" whereby the plaintiff was injured in his business, and several farmers, particularly X., Y., and Z., who had usually employed him to kill the rats on their farms, ceased to do so; and the plaintiff claims £20 damages.

Seduction.

J. For that the defendant debauched and carnally knew M. G., then being the daughter and servant of the plaintiff, whereby the said M. G. became pregnant, and was delivered of a child; and the plaintiff thereby lost her services, and incurred expense in nursing and obtaining medical assistance and attendance for her; and the plaintiff claims £100 damages.

Above is the statement of the plaintiff's cause of action.
Dated this day of 186 .
A. B., Plaintiff,
or
E. F., Plaintiff's Attorney.
To the Registrar of the Court and to the Defendant.

[N.B.—*The above Forms are only given as examples; and the statement of the Plaintiff's cause of action must in all cases be according to the facts, and be as concise as possible.*]

24.

NOTICE OF TRIAL OF ACTION OF TORT REMITTED UNDER 30 & 31 VICT. C. 142 S. 10, TO BE TRIED IN A COUNTY COURT.

Being an action of tort commenced in Her Majesty's Court of at Westminster, and remitted by order of a Judge thereof, under section 10 of "The County Courts Act, 1867." to be tried in this Court.

Take notice that this action will be tried at a Court to be holden on the day of at o'clock in the forenoon.

Dated this day of 186 .
Registrar of the Court.
To the Plaintiff and Defendant.

[N.B.—*To the notice sent to the Defendant the Registrar must annex a copy of the statement of the Plaintiff's cause of action.*]

25.

AFFIDAVIT FOR DISCOVERY.

I, A. B., the above-named Plaintiff [*or* Defendant] make oath and say as follows: (*Here set out in paragraphs the documents, and that the Deponent is advised and believes that it is material and necessary for him, in order to support his claim upon the trial, to have such documents produced to him, and that he will derive material advantage and support from their production, and that he is advised and believes that he is entitled to their production, and that he believes that the said documents are in the possession or power of the Defendant*).

26.

ORDER FOR DISCOVERY.

Upon reading of an affidavit by the Plaintiff [*or* Defendant], a copy of which is annexed marked A., I do order that the Plaintiff [*or* Defendant] do within days answer an affidavit, stating what documents he has in his possession or power relating to the matters in dispute in this cause, and what he knows as to the custody they or any or either of them are in, and whether he objects, and if so, on what grounds, to the production of such as are in his possession or power.

And I further order, that the costs of this application and of the discovery shall be costs in the cause

Dated this day of 186 .

27.

AFFIDAVIT IN OBEDIENCE TO ORDER FOR DISCOVERY.

I of the above-named plaintiff [*or* defendant] make oath and say,— .

1. That the documents hereinafter set forth are to the best of my knowledge and belief the only documents in my possession or power relating to the matters in dispute in this action, and the same are in my possession, viz. :—

A letter from to dated

An agreement purporting to be between E. F. and G. H., dated

2. I do not object to the production of the said documents, or any or either of them.

[*Or* I object to the production of the said documents [*or if not to all, but to some of them, state which*], on the following grounds, that is to say [*here state the grounds of objection*].

28.

INTERROGATORIES AFFIDAVIT..

We, A. B. of the above named plaintiff [or defendant], and L. M. of attorney [*or* agent] in this cause for the said plaintiff [*or* defendant] make oath, and say, first,

And I the said A.B. for myself say,—

1. That, I believe that I shall derive material benefit in this cause from the discovery which I seek by the interrogatories which I require to be delivered herein.

2. That I believe that I have a good cause of [*or* defence to this] action on the merits.

And I the said A.B. say—

3. That the plaintiff [*or* defendant] will derive material benefit by the discovery which he seeks by interrogatories.

4. That I believe that the plaintiff [*or* defendant] has a good cause [*or* defence to this] action on the merits.

29.

NOTICE OF PAYMENT OF PART OF CLAIM INTO COURT.

9 & 10 Vict. c. 95, s. 82.

Take notice, that the defendant has paid into Court the sum of £ together with costs proportionate to that sum. If you elect to accept the same in full satisfaction of the sum claimed, and send to the registrar of this Court, and to the defendant a written notice forthwith, by post, or by leaving the same at the registrar's office and at the defendant's place of abode or business, the action will be discontinued, and you will be liable to no further costs. In default of such notice the action may proceed, and if you do not appear at the hearing you will be liable to pay to the defendant such costs as he may incur for appearing at the hearing, or such other sum of money as the Judge may order, for expenses subsequent to the payment into Court.

Dated this day of 186 .

Registrar of the Court.

To the Plaintiff.

[N.B.—*Upon your applying for the above amount, it will be necessary that you should produce the plaint-note given to you on the entry of the plaint.*]

30.

NOTICE OF SET-OFF. 9 & 10 Vict. c. 95, s. 76.

Take notice, that the defendant intends at the hearing of this cause to claim a set-off against the plaintiff's demand, the particulars of which set-off are annexed hereto.

Dated this day of 186 .

The Defendant [*or* 's Attorney].

To the Registrar of the Court.

(*The Registrar is to annex to this notice the particulars of set-off, as furnished by defendant, sealed with the seal of the Court*).

31.

NOTICE OF SPECIAL DEFENCE. 9 & 10 Vict. c. 95, s. 76.

Take notice, that the defendant intends at the hearing of this cause to give in evidence and rely upon the following ground of defence.

Dated this day of 186 .

The Defendant.

To the Registrar of the Court.

That the defendant was an infant, within the age of twenty-one years, when the supposed claim arose [*or* the supposed contract or agreement was made], and that he was born as he believes at in the county of on the day of . Infancy.

That the defendant is now [*or*, that she was, at the time when the supposed claim arose, *or* the supposed contract or agreement was made], the wife of of . And that she was married to him at in the county of on the day of , and that she resides at in the county of . Coverture.

That the claim for which the defendant is summoned is barred by a Statute of Limitation. Statute of Limitation.

That the defendant is a discharged bankrupt, and obtained his order of discharge from the [*here state Court*] on the day of . Bankruptcy.

That the defendant was duly discharged, under an Act for the Relief of Insolvent Debtors [*or* obtained a final order under the Protection Acts, 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96], on the day of at the Court of held at . Insolvency.

That the libel [*or* slander] complained of is true in substance and in fact. Libel or Slander.

Equitable Defence.

Take notice that the defendant intends at the hearing of this cause to rely upon a "defence on equitable grounds," and that the facts constituting such equitable defence are set forth in the statement hereunto annexed.

Statement.

The facts constituting the equitable defence to this action are as follows.

[*Here set out the facts as concisely as possible, and number the paragraphs as in an affidavit.*]

NOTE.—*Notices of special defence, in cases commenced in a superior Court and sent to the County Court for trial under sections 7 or 10 of 30 & 31 Vict. c. 142 must have, in addition to the usual heading, in cases under section 7, the heading of form 22, and in cases under section 10 the heading of form 24.*

32.

NOTICE TO BE GIVEN BY DEFENDANT UNDER 6 & 7 VICT. C. 96, S. 1 IN AN ACTION FOR LIBEL OR SLANDER REMITTED UNDER 30 & 31 VICT. C. 142, S. 10 TO BE TRIED IN A COUNTY COURT.

Being an action for libel [*or* slander] commenced in her Majesty's Court of at Westminster, and remitted by order of a Judge thereof under section 10 of "The County Courts Act, 1867," to be tried before this Court.

Take notice that the defendant on the trial of this action will give in evidence in mitigation of damages that he made [*or* offered] an apology to the plaintiff for the libel [*or* slander] complained of before the commencement of the action [*or* as soon after the commencement of the action as he had an opportunity of doing so].

To the Registrar of the Court
and to the Plaintiff.

33.

NOTICE TO BE GIVEN BY DEFENDANT UNDER 6 & 7 VICT. C. 96, S. 2 IN AN ACTION FOR LIBEL REMITTED UNDER 30 & 31 VICT. C. 142, S. 10, TO BE TRIED IN A COUNTY COURT.

Being an action for libel commenced in her Majesty's Court of at Westminster, and remitted by order of a Judge thereof under section 10 of "The County Courts Act, 1867," to be tried before this Court.

Take notice that the defendant on the trial of this action will give in evidence and rely upon the following ground of defence; (that is to say),

That the libel was inserted in the newspaper called or known by the name of without actual malice and without gross negligence, and that before the commencement of the action [*or* as soon after the commencement of the action as he had an opportunity of doing so] the defendant inserted in the said newspaper [*or* offered to publish in any newspaper or periodical publication to be selected by the plaintiff] a full apology for the said libel, and that the defendant has paid into Court £

by way of amends for the injury sustained by the plaintiff by the publication of the said libel.

Dated this day of 186 .

C. D., Defendant
or
E.F., Defendant's Attorney.

To the Registrar of the Court
and to the Plaintiff.

[*N.B.—If the libel was published in any periodical publication other than a newspaper, alter the notice accordingly*].

34.

SUMMONS TO WITNESS.

9 & 10 Vict. c. 95, ss. 85, 86.

You are hereby required to attend at [*the Court house in*] on the day of 186 , at the hour of , in the noon, to give evidence in the above cause on behalf of the [*plaintiff* or *defendant, as the case may be*], and then and there to have and produce [*state any particular documents required*], and all other books, papers, writings, and other documents relating to the said action, which may be in your custody, possession, or power. In default of your attendance you will be liable to a penalty of ten pounds, under 9 & 10 Vict. c. 95.

Dated this day of 186 .

Registrar of the Court.

To

35.

ORDER FINING A WITNESS FOR NON-ATTENDANCE.

9 & 10 Vict. c. 95, s. 86.

Whereas of was duly summoned to appear as a witness in this cause at a Court this day holden, and at the time of being so summoned payment [*or* a tender of payment] of his expenses was made, according to the scale of allowance settled by the rules of practice of the County Courts:

And whereas he has neglected without sufficient cause shown to appear at the Court [*or* to produce] [*here describe what he was required by such summons to produce*]: *or* (*a*) Whereas being this day present in Court, and being required by the Court to give evidence in this cause, refused to be sworn, without alleging as a ground for such refusal that he had any conscientious scruples with respect to taking an oath [*or*, after being duly sworn, refused to give evidence] [*or* to produce] [*here describe what he was required and bound to produce*]: It is hereby ordered that the said shall forthwith [*or* on the day of] pay to the registrar of this Court a fine of £ for such neglect [*or* refusal].

36.

WARRANT OF EXECUTION AGAINST THE GOODS OF A WITNESS FOR A FINE.

9 & 10 Vict. c. 95, ss. 86, 87.

Whereas was duly summoned to appear as a witness in this cause at a Court holden at on the day of 18 , and at the time of being so summoned payment [*or* a

(*a*) Where witness is present in Court, commence form here.

tender of payment] of his expenses was made, according to the scale of allowance settled by the rules of practice of the County Courts; and whereas he neglected, without sufficient cause shown, to appear at such Court [*or* to produce] [*here describe what he was required and bound to produce*]: *or* (*a*) Whereas being present in Court on the day of 186 , and being required by the Court to give evidence, refused to be sworn without alleging as a ground for such refusal that he had any conscientious scruples with respect to taking an oath [*or* after being duly sworn, refused to give evidence, *or* to produce, etc.], it was thereupon ordered by the Court that he should forthwith [*or* on the day of 18 ,] pay to the Registrar of this Court a fine of £ for such neglect [*or* refusal]; and whereas the said sum has not been paid according to the said order, and the Judge of this Court has ordered it to be levied as hereinafter mentioned, these are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said wheresoever they may be found, within the district of this Court (excepting the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds) the sum stated at the foot of this warrant, being the amount of such fine and the costs of this execution, and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialities, or securities for money belonging to him which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the Registrar of this Court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of this Court this day of 186 .

By the Court,

Registrar of the Court.

To the High Bailiff of the said Court, and others the Bailiffs thereof.

	£	*s.*	*d.*
Amount of fine			
Poundage for issuing this warrant			
Total			

Notice.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said witness.

9 & 20 Vict. c. 108, s. 46. Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 186 .

(*a*) Where witness is present in Court, commence form here.

37.

NOTICE TO BE SENT WITH ALL WARRANTS of EXECUTION AGAINST THE GOODS.

Take notice, that the warrant of execution against your goods on the judgment obtained against you in this action is for the following amount:

	£	s.	d.
Amount for which judgment was obtained . .			
Since paid by you into Court			
Remaining due on judgment			
Poundage for issuing this warrant			
Total amount to be levied .			

The costs of keeping possession of such of your goods as may be seized is SIXPENCE IN THE POUND PER DIEM ON THE VALUE OF SUCH GOODS.

If you pay the amount to be levied within half an hour of the entry of the bailiff, you will not be required to pay to him any further sum than the amount directed to be levied as stated above.

Your goods are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at your request.

If your goods are sold, the following fees are chargeable for the appraisement and sale, and no others:—

For the appraisement SIXPENCE IN THE POUND on the value of the goods appraised, over and above the stamp duty.

For the sale, including advertisements, catalogues, sale and commission, and delivery of the goods, ONE SHILLING IN THE POUND ON THE NET PRODUCE OF THE SALE.

38.

AFFIDAVIT TO OBTAIN A WARRANT UNDER SECT. 31. OF 19 & 20 VICT. C. 108. 19 & 20 Vict. 108, s. 31.

I of the plaintiff [*or* defendant] make oath and say, that the above cause is appointed to be tried at this Court on the day of 186 , and that E. F., now a prisoner confined in [*state the prison*], will be a material witness for me upon the said trial. And I further say, that I am advised and verily believe that I cannot safely proceed to the trial of the said cause without the testimony of the said E. F. And I do hereby make application to the Judge of this Court for a warrant, in order that the said E. F. may be brought before this Court to be examined as a witness on my behalf.

39.

WARRANT TO BRING UP A PRISONER TO GIVE EVIDENCE UNDER SECT. 31 OF 19 & 20 VICT. C. 108. 19 & 20 Vict. c. 108, s. 31.

To [*officer in whose custody the prisoner is*].

Whereas the plaintiff [*or* defendant] hath made application

to me, by affidavit, for a warrant to bring up before this Court E. F., who it is said is detained as a prisoner in your custody, in order that the said E. F. may be examined as a witness on behalf of the said Plaintiff [*or* Defendant] in a certain cause depending in this Court between the said A. B., Plaintiff, and C. D., Defendant: You are therefore hereby required to bring the said E. F. before this Court at [*Court-house*] on the day of 186 , at o'clock in the noon, then and there to be examined as a witness on behalf of the said Plaintiff [*or* Defendant]; and immediately after the said E. F. shall have given his testimony before this Court, that you safely conduct him the said E. F. to the prison from which he shall have been brought under this warrant.

40.

19 & 20 Vict. c. 108, ss. 20, 22.

ORDER FOR CHANGING THE VENUE UNDER EITHER SECT. 20 OR 22 OF 19 & 20 VICT. C. 108.

It is ordered, that the venue in the above cause be changed, and that the cause be sent for hearing to the County Court of holden at .

To the Plaintiff and Defendant.

41.

19 & 20 Vict. c. 108, ss. 20, 22.

NOTICE BY COURT TO WHICH AN ACTION HAS BEEN SENT, OF THE DAY OF HEARING.

Take notice, that the above cause has been sent for hearing to this Court, and that it is appointed to be heard in this Court on the day of 186 , at the hour of in the noon.

To the Plaintiff and Defendant.

42.

19 & 20 Vict. c. 108. s. 39.

NOTICE OF OBJECTION UNDER SECT. 39 OF 19 & 20 VICT. C. 108.

Take notice, that under the provisions of s. 39 of 19 & 20 Vict. c. 108, I object to this action being tried in the County Court; and I propose as my sureties [*here state the full names and additions of the sureties, whether housekeepers or freeholders, and their residences for the last six months, therein mentioning the county or city, places, streets, and numbers, if any*] [*or*, and I propose to deposit a sum of money in lieu of giving sureties].

Defendant.

To the Registrar of the said Court.

43.

19 & 20 Vict. c. 108, s. 39.

BOND UNDER SECT. 39 of 19 & 20 VICT. C. 108.

A sum sufficient to cover

Know all men by these presents, that we, A. B., of, etc., and C. D. of etc., and E. F. of, etc., are jointly and severally held

and firmly bound to G. H. of, etc., in £ to be paid to the said G. H., or his certain attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. the amount claimed, and costs of trial in Superior Court, not exceeding in the whole 150*l.*

Sealed with our seals, and dated this day of one thousand eight hundred and

For Notice of Sureties and Affidavit of Justification, see Forms 15 *and* 16.

Whereas an action has been brought in the County Court of holden at wherein the abovenamed G. H. is Plaintiff, and the above-bounden A. B. is Defendant:

And whereas the said A. B. has given due notice to the said G. H. of his the said A. B.'s objection to the said action being tried in the said Court, as provided by s. 39 of 19 & 20 Vict. c. 108:

And whereas it is by the same section of the said statute provided, that the party who shall object shall give security, to be approved by the Registrar of the Court aforesaid, for the amount claimed, and costs of trial in one of the Superior Courts of Common Law:

And whereas the above-named C. D. and E. F. at the request of the said A. B., have agreed to enter into the above-written obligation for the purposes aforesaid, and the security intended to be hereby given is approved of by

the Registrar of the said County Court, as appears by his allowance in the margin hereof: Now the condition of this obligation is such, that if the above-bounden A. B., C. D., and E. F., any or either of them, shall pay unto the said G. H., his executors, administrators, or assigns, the costs of the trial in one of the Superior Courts of Common Law, and the amount for which a verdict may pass against the said A. B., then this obligation shall be void, otherwise shall remain in full force.

I approve of this bond. *I.K.* (L.S.) Registrar. *This Bond requires a stamp.*

A. B. (L.S.)
C. D. (L.S.)
E. F. (L.S.)

Signed, sealed, and delivered by the above-bounden in the presence of

NOTE.—*If a deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond, and will not require a stamp.* 19 & 20 Vict. c. 108, s. 71.

44.

CONSENT THAT COURT SHALL DECIDE IN AN ACTION WHERE TITLE HAS INCIDENTALLY COME IN QUESTION.

We [*or* the respective attorneys of], the Plaintiff and Defendant, do hereby, under the provisions of section 25 of 19 & 20 Vict. c. 108, consent that this action shall be decided by the Judge of this Court 19 & 20 Vict. c. 108, s. 25.

Given under our hands, this day of 186 .

Plaintiff [*or*'s Attorney].
Defendant [*or*'s Attorney].

45.

19 & 20 Vict. c. 108, s. 26.

NOTICE TO BE SENT TO BOTH PARTIES UNDER SECT. 26 OF 19 & 20 VICT. C. 108.

Whereas, under the provision of s. 26 of 19 & 20 Vict. c. 108, an action commenced in the Court of [*name of superior Court*], wherein A. B. of, etc., is Plaintiff, and C. D. of, etc. is Defendant, has been ordered by [*name of Judge of superior Court*] to be tried in this Court.

Take notice, that the said action will be heard in this Court on the day of at the hour of in the noon.

To Plaintiff and Defendant.

46.

9 & 10 Vict. c. 95, s. 70.

REGISTRAR'S NOTICE OF JURY.

Take notice, that this cause will be tried by a jury, the having demanded a jury therein.

Dated this day of 186 .

Registrar of the Court.

To the Plaintiff [*or* Defendant].

47.

9 & 10 Vict. c. 95, s. 72.

SUMMONS TO JURORS.

In the County Court of holden at

You are hereby summoned to appear and serve as a juror in this Court, at the on the day of 186 . at the hour of in the noon, upon the trial of the cause or causes to be then and there tried by jury, and in default of attendance you will be liable to a penalty of five pounds, under s. 72 of 9 & 10 Vict. c. 95.

Given under the seal of the Court, this day of 186 .

Registrar of the Court.

To
of

48.

9 & 10 Vict. c. 95, s. 72.

ORDER FINING A JUROR FOR NON-ATTENDANCE.

In the County Court of holden at .

Whereas was duly summoned to appear and serve this day as a juror in this Court, upon the trial of the cause or causes to be tried by jury at this Court; and whereas he has neglected, without sufficient cause shown, to appear and serve as a juror at this Court. It is hereby ordered, that he shall forthwith [*or* on the day of] pay to the registrar of this Court a fine of £ for such neglect.

49.

9 & 10 Vict. c. 95, s. 87.

WARRANT OF EXECUTION AGAINST THE GOODS OF A JUROR FOR A FINE.

Whereas was duly summoned to appear and serve as a

juror at a Court holden on the day of upon the trial of any cause or causes to be then and there tried by jury:

And whereas he neglected, without sufficient cause shown, then to appear and serve as a juror at such Court, it was thereupon ordered by the Court that he should forthwith [*or* on the day of] pay to the registrar of this Court a fine of £ for such neglect:

And whereas the said sum has not been paid according to the said order, and the judge of this Court has ordered it to be levied as hereinafter mentioned; these are therefore to require and order you forthwith to make and levy, by distress and sale of the goods and chattels of the said wheresoever they may be found within the district of this Court (excepting the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount of such fine, and the costs of this execution, and also to seize and take any money or bank notes (whether of the bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialities, or securities for money belonging to him, which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the Registrar of this Court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court this day of 186 .

By the Court,

Registrar of the Court.

To the High Bailiff of the Court,
and others the Bailiffs thereof.

	£	s.	d.
Amount of fine			
Poundage for issuing this warrant . . .			
Total			

Notice.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said juror.

Application was made to the Registrar for this warrant at minutes past the hour in the noon of the day of 186 . 19 & 20 Vict. c. 108, s. 46.

50.

Order to Adjourn Proceedings.

It is ordered, that the trial of this action be adjourned until the day of 186 , at o'clock in the noon. 9 & 10 Vict. c. 95, s. 81.

51.

Order appointing Guardian named by Infant Defendant.

Whereas now, at the hearing of this cause, the defendant,

being an Infant, appears here in Court, and names of to act as his guardian, who now assents to act as such guardian, I do therefore hereby appoint him to be guardian of the defendant in this cause.

52.

ORDER APPOINTING GUARDIAN OF INFANT DEFENDANT WHERE DEFENDANT DOES NOT NAME A GUARDIAN.

Whereas now at the hearing of this cause, the defendant, being an infant, appears here in Court, and does not name a guardian, I do therefore hereby appoint to be guardian of the defendant in this cause.

53.

13 & 14 Vict. c. 61, s. 10.

ORDER FOR COSTS TO DEFENDANT WHERE PLAINTIFF DOES NOT APPEAR.

Whereas the plaintiff has not appeared, either by himself, his attorney, or agent, at the Court holden this day, being the day appointed for the trial of this cause, and the defendant has appeared in person [*or* by his attorney or agent], and has not admitted the demand, it is awarded that the plaintiff do pay the sum of £ for the defendant's costs, and it is ordered that the plaintiff do pay the same to the registrar of this Court on the day of 186 .

54.

19 & 20 Vict. c. 108, s. 69.

AGREEMENT UNDER SECT. 69 OF 19 & 20 VICT. C. 108.

We [*or* the respective attorneys or agents of] the above-named plaintiff and defendant, do hereby, under the provision of s. 69 of 19 & 20 Vict. c. 108, agree that the decision of the Judge of this Court in this action shall be final.

Given under our hands this day of

Plaintiff [*or* 's Attorney].
Defendant [*or* 's Attorney].

55.

9 & 10 Vict. c. 95, s. 82.

JUDGMENT AGAINST DEFENDANT FOR PAYMENT OF COSTS.

Upon hearing the plaintiff's application at a Court holden this day, it is adjudged that the plaintiff do recover against the defendant the sum of £ for costs incurred by the plaintiff in preparing for trial [*or* in attending Court] before the notice of payment of money into Court was received by him, such money having been so paid in less than five clear days before the return-day of the summons.

And it is ordered that the defendant do pay the same to the registrar of this Court on the day of 186 .

56.

JUDGMENT FOR DEFENDANT, OR OF NONSUIT.

9 & 10 Vict. c. 95, s. 79.

Upon hearing this cause at a Court holden this day, it is adjudged that judgment be entered for the defendant [*or* that judgment of nonsuit be entered], and that the plaintiff do pay the sum of £ for the defendant's costs: And it is ordered that the plaintiff do pay the same to the registrar of this Court on the day of

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57.

JUDGMENT FOR PLAINTIFF.

Acknowledgment of Payment into Court.			
Date.	£	s.	d.	Received by

It is this day adjudged that the plaintiff do recover against the defendant the sum of £ for debt [*or* damages], and £ for costs, amounting together in the sum of £ . And it is ordered that the defendant do pay the same to the registrar of the Court, on the day of [*or* by instalments of for every days; the first instalment to be paid on the day of 18].

[In case default be made in payment of any one of such instalments, and execution issue, it shall be for the whole of the above amount then remaining due.]

This form will, by striking out the words within brackets, or the words on the day of in line 6, apply to judgments of payment, whether for payment forthwith of the whole claim or by instalments, and to judgments under 13 & 14 *Vict. c.* 61, *s.* 9, *and also to judgments in replevin, where the judgment is for the plaintiff.*

58.

NOTICE TO HIGH BAILIFF UNDER RULE 28.

Take notice, that the judge of this Court has ordered that you should pay into this Court the sum of by way of compensation to the plaintiff in Plaint No. for the trouble and expense caused him by your neglect to comply with the requisitions of rule 27.

(Signed)

Registrar of the Court.

To the High Bailiff of the County Court of , holden at

59.

NOTICE OF DESIRE TO EXAMINE DEFENDANT AS TO CERTAIN DEBTS DUE TO HIM.

I, the above-named plaintiff, am desirous, should I succeed in obtaining a judgment against the defendant, of having him examined, forthwith after I have obtained such judgment, as to

whether or not the following debts are due to him from the following persons, viz. :—

E. F. of for goods sold and delivered.
G. H. of for work done.

Signed *A.B.*
Plaintiff.

To the Registrar of the above Court.

60.

ORDER WHEN GARNISHEE PRESENT.

No. of Plaint.

In the County Court of at
Between A. B., Plaintiff,
and
C. D., Defendant.

Whereas the plaintiff has obtained a judgment against the defendant for the sum of £ [*here insert the amount of judgment*] :

Upon examination of the defendant and E. F., of , it is ordered that all debts due and owing or accruing due from the said E. F. to the above-named defendant shall be attached to answer the said judgment debt.

And it is further ordered that the said E. F. do pay into court the sum of being the amount of the debt due from him to the above-named defendant [*or* being so much of the debt due from him to the above-named defendant as is sufficient to satisfy the said judgment debt] on the day of

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61.

SUMMONS IN NATURE OF SCIRE FACIAS UPON A GARNISHEE.

No. of Plaint.

In the County Court of holden at
(*Seal.*)
Between A. B., Plaintiff,
[*address and description*]
and
E. F., Defendant,
[*address and description.*]

Whereas the plaintiff, at a Court holden at , on the day of 18 , obtained a judgment against C. D. of [*name, address, and description*] for the sum of for and costs, which judgment remains unsatisfied. And whereas the plaintiff having filed an affidavit stating that you are indebted to the said C. D., you are hereby summoned to appear at a Court holden at on the day of 18 , at the hour of in the noon, to show cause why an order should not be made upon you for the payment of the amount of the said judgment, or so much thereof as shall equal the amount of the debts due and owing and accruing from you to the said C. D.

And take notice, that from and after the service of the summons upon you all such debts are attached to answer the said judgment, and that if you shall pay the said debts to the said C. D., or otherwise dispose of them, you will be liable to be committed for contempt.

And further take notice, that if you shall pay to the registrar of this Court the amount of such debts, or so much thereof as will satisfy the judgment debt, you will incur no costs.

Registrar of the Court.

To the Defendant.

62.

JUDGMENT AGAINST GARNISHEE.

No. of Plaint.

In the County Court of holden at
(*Seal.*)

Between A. B., Plaintiff,
[*address and description.*]
and
E. F., Defendant.
[*address and description.*]

Whereas the plaintiff at a Court holden at on the day of 18 obtained a judgment against C. D. of for the sum of £ for and for costs, and which judgment remains now unsatisfied: And whereas the plaintiff having filed an affidavit stating that the defendant was indebted to the said C. D., the defendant was summoned to show cause why he should not be ordered to pay the amount of the said judgment, or so much thereof as should equal the amount of the debts due and owing and accruing from him to the said C. D.; and the defendant having failed to appear before the Court this day [*or* appeared before the Court this day, and having failed to show cause why he should not be ordered to pay such debts, *or* having shown sufficient cause why he should not be ordered to pay such debts]:

It is ordered, that the plaintiff do recover against the defendant the sum of £ [*here insert the amount of the judgment debt, or so much thereof as the debts amount to when the same are less than the judgment debt*] and £ for costs, amounting together to the sum of £ [*or* that the plaintiff do pay the sum of £ for defendant's costs].

It is ordered that the defendant [*or* plaintiff] do pay the same to the registrar of the Court on the day of 18 [*or, where judgment for the plaintiff, and the Judge so order*, by instalments of for every days; the first instalment to be paid on day of 18].

Given under the seal of the Court, this day of 18 .

By the Court.

Registrar of the Court.

63.

EXECUTION AGAINST GARNISHEE.

Whereas on the day of 186 it was ordered, that E. F. should pay into Court the sum of £ , being the [*or* so much of the] amount of debts found due from him to C. D. of [*here insert address and description*], a judgment debtor of A. B. [*or* as is sufficient to satisfy the judgment of the said A. B.]; and whereas default has been made in payment according to the said order, these are therefore (the same as in ordinary executions).

64.

9. & 10 Vict. c. 95, s. 101.

WARRANT OF COMMITMENT ON HEARING OF PLAINT.

Whereas, at a Court holden at on the day of 186 , the plaintiff obtained a judgment against the defendant for the sum of £ for debt [*or* damages], and £ for costs, and thereupon it was ordered that the defendant should pay the same to the registrar:

And whereas the defendant having personally appeared to the summons in this action, and being present in Court, was then and there examined touching his estate and effects, and the circumstances under which he contracted the said debt [*or* incurred the said damages *or* liability], and as to the means and expectation he then had, and as to the means he still had, of discharging the said debt [*or* damages], and as to the disposal he had made of any property:

And whereas this Court upon such examination ordered that the defendant should be committed to prison for days, for [*state the ground of committal*].

These are therefore to require you the said high bailiff, bailiffs, and others, to take the defendant and to deliver him to the governor or keeper of the above-named prison, and you the said governor or keeper to receive the defendant and him safely to keep in the said prison for days from the arrest under this warrant, or until he shall be sooner discharged by due course of law.

Given under the seal of the Court this day of 186 .

By the Court.

Registrar of the Court.

	£	*s.*	*d.*
Amount adjudged to be paid			
Poundage for issuing this warrant			
Total amount due			

[*N.B.—This warrant remains in force one year from the date thereof.*]

65.

19 & 20 Vict. c. 108, s. 26.

CERTIFICATE OF THE RESULT OF THE HEARING OF A CAUSE, UNDER SECTION 26 OF 19 & 20 VICT. C. 108.

In the County Court of holden at

I hereby certify, that an action commenced in the Court of [*name of superior Court*], wherein A. B. is plaintiff and C. D. is defendant, which, under section 26 of 19 & 20 Vict. c. 108, was ordered by [*name of judge of superior Court*] to be tried in this Court, has been heard accordingly in this Court on this day, and that the result was as follows:

[*State the finding on the several issues joined in the action, or that the plaintiff was nonsuited.*]

Dated this day of 186 .

Registrar of the Court.

66.

ORDER TO SUSPEND ORDER OF JUDGMENT. 9 & 10 Vict. c. 95, s. 105.

It is ordered, that an order of this Court in this action, bearing date the day of 186 , be suspended until the day of 186 .

67.

ORDER FOR COSTS OF THE DAY UNDER SECTION 40 OF 19 & 20 VICT. C. 108. 19 & 20 Vict. c. 108, s. 40.

Whereas a rule [*or* summons] has been granted by [*name of superior Court or judge*], requiring cause to be shown why a writ of certiorari [*or* prohibition] should not issue in this cause, and no order has been made by such Court [*or* judge] respecting the costs in this Court:

And whereas a copy of such rule [*or* summons] has not been served on the plaintiff [*or* defendant] [*or* on the registrar], according to section 40 of 19 & 20 Vict. c. 108:

And whereas the plaintiff [*or* defendant] has on this day appeared at this Court to prosecute [*or* defend] this cause:

It is ordered, that the defendant [*or* plaintiff] do pay the sum of £ for the plaintiff's [*or* defendant's] costs of the day, and it is ordered that the defendant [*or* plaintiff] do pay the same to the registrar of the Court on the day of 186 .

68.

ORDER FOR COSTS OF THE DAY UNDER SECTION 41 OF 19 & 20 VICT. C. 108. 19 & 20 Vict. c. 108, s. 41.

Whereas a writ of certiorari [*or* prohibition] has been granted in this cause by [*name of superior Court or judge*], on the ex parte application of the defendant [*or* plaintiff], who has not lodged it with the registrar of the Court [*or* has not given notice to the plaintiff [*or* defendant] that it has issued] two clear days before this day, being the day fixed for hearing this cause:

And whereas the said [superior Court *or* judge] has made no order respecting the costs of the cause in this Court:

And whereas the plaintiff [*or* defendant] has on this day appeared at this Court to prosecute [*or* defend] this cause:

It is ordered, that the defendant [*or* plaintiff] do pay the sum of £ for the plaintiff's [*or* defendant's] costs of the day; and it is ordered that the defendant [*or* plaintiff] do pay the same to the registrar of the Court on the day of 186 .

69.

NOTICE TO PLAINTIFF OF PAYMENT OF INSTALMENT.

I hereby give you notice, that A. B., the defendant, has paid into Court the sum of £ under the judgment obtained by you against him.

[N.B.—*Upon your applying for the above amount, it will be necessary that you should produce the plaint-note given to you on the entry of the plaint.*]

70.

9 & 10 Vict. c. 95, ss. 94, 95.

WARRANT OF EXECUTION AGAINST THE GOODS OF DEFENDANT.

Whereas on the day of 186 , the plaintiff obtained a judgment in this Court against the defendant for the sum of £ for debt [*or* damages] and costs; and it was thereupon ordered by the Court that the defendant should pay the same to the registrar on the day of [*or* by instalments of for every days]:

And whereas default has been made in payment according to the said order; these are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant, wheresoever they may be found, within the district of this Court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, including the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this Court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court, this day of 186 .

By the Court,

Registrar of the Court.

To the High Bailiff of the said Court, and others the bailiffs thereof.

	£	*s.*	*d.*
Amount for which judgment was obtained .			
Paid into Court			
Remaining due			
Poundage for issuing this warrant . .			
Total amount to be levied . .			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant.

19 & 20 Vict. c. 108, s. 46.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 186 .

This form will also apply to a warrant of execution upon a judgment under 13 & 14 *Vict. c.* 61, *s.* 9; *and by leaving out the words, "and whereas default has been made in payment according to the said order," to a warrant of execution under the Bills of Exchange Act.*

71.

WARRANT OF EXECUTION AGAINST THE GOODS OF PLAINTIFF. 9 & 10 Vict. c. 95, s. 94.

Whereas at a Court holden at on the day of 186 ; it was ordered by the Court, that judgment should be entered for the defendant [*or* that judgment of nonsuit be entered], and that the plaintiff should pay to the registrar of the Court, on or before the day of the sum of for the defendant's costs of suit:

And whereas default has been made in payment according to the said order: These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the plaintiff, wheresoever they may be found within the district of this Court (excepting the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the defendant under the said judgment, including the costs of this execution, and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the plaintiff which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of the Court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of this Court, this day of 186 .

By the Court,
Registrar of the Court.

To the High Bailiff of the said Court,
and others the bailiffs thereof.

	£	s.	d.
Costs adjudged			
Paid into Court			
Remaining due			
Poundage for issuing this warrant . .			
Total amount to be levied . . .			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said plaintiff.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 186 . 1 & 20 Vict. c. 108, s. 46.

72.

APPLICATION FOR JUDGMENT SUMMONS.

No. of Plaint.

A. B., Plaintiff,
C. D., Defendant.

I apply for the issue of a judgment summons against the said defendant, and I state that I rely on the following grounds for obtaining an order of committal of the judgment debtor; that is to say,

That the judgment debtor contracted the said debt under false pretences, *or* by means of fraud or breach of trust, or without reasonable expectation of being able to pay the same;

That the judgment debtor has made a gift or transfer of part of his property with intent to defraud his creditors;

That the judgment debtor has charged *or* removed *or* concealed part of his property with intent to defraud his creditors;

That the judgment debtor has had, since the judgment was obtained against him, sufficient means and ability to pay the sums directed to be paid under the judgment;

And I undertake to prove, to the satisfaction of the judge at the hearing, that the judgment debtor has been able since the judgment to pay the amount ordered by the Court as it became due.

I am aware that if I do not prove the same accordingly, that I shall have to pay the costs of this summons.

[A. B., Judgment Creditor,
or C. D., Agent to the Judgment Creditor.]

73.

JUDGMENT SUMMONS.

19 & 20 Vict. c. 108, s. 48.

In the [*title of Court issuing summons*].

No. of Plaint.
No. of Judgment Summons.

Between A. B., Plaintiff,
[*Address, description.*]
and
C. D., Defendant,
[*Present address, description, and, if known, place of employment.*]

Whereas the plaintiff obtained a judgment [*or if no judgment has been obtained, or if a fresh order has been obtained upon a judgment,* an order] against you, the above-named defendant, in the County Court of holden at on the day of 186 , for the payment of £ for debt [*or* damages], and £ for costs, upon which judgment [*or* order], and the subsequent process issued thereon, the sum of £ is now due: You are therefore hereby summoned to appear personally in this Court at [*place where Court holden*] on the day of 186 , at the hour of in the noon, to be examined by the Court touching your estate and effects, and the circumstances under which you contracted the said debt [*or*

incurred the said damages], and as to the means and expectation you then had, and as to the means you still have, of discharging the said debt [*or* damages], and as to the disposal you may have made of any property.

Dated this day of 186 .

Registrar of the Court.

	£	s.	d.
Amount of judgment or order, including costs .			
Cost of warrant against the goods, if any . . .			
Costs of previous judgment summonses, hearings, and commitments, if any			
Costs of this summons			
Paid into Court			
Amount unpaid and due on judgment			
Deduct amount of instalments at *s.* per month, which were not required to have been paid before the date of the summons			
Amount upon the payment of which no further proceedings can be had until default of payment of next instalment			

When issued under 19 *&* 20 *Vict. c.* 108, *s.* 48, *or under Rule* 144, *insert* "Issued by leave of the judge."

74.

WARRANT OF COMMITMENT. 19 & 20 Vict., c. 108, s. 48.

In the [*title of Court ordering committal*].

No. of Plaint.
No. of Judgment Summons.
No. of Warrant.

Between A. B., Plaintiff,
and
C. D., Defendant.

To the High Bailiff and others the bailiffs of the said Court and all peace officers within the jurisdiction of the said Court, to the governor or keeper of the [*prison used by the Court*].

Whereas the plaintiff obtained a judgment [*or* order] against the defendant in the County Court of holden at on the day of 186 , for the payment of £ for debt [*or* damages] and costs, upon which judgment [*or* order], and the subsequent process issued thereon, the sum of £ was at the date of the issuing of the summons hereinafter mentioned, and still is due:

And whereas a summons was, at the instance of the plaintiff, duly issued out of this Court, by which the defendant was required to appear at this Court on the day of 186 , to answer such questions as might be put to him pursuant to section 98 of the statute 9 & 10 Victoria, chapter 95, in relation to such debt [*or* damages], which summons was proved to this Court to have been personally and duly served on the defendant:

And whereas this Court, at the hearing of the said summons, ordered that the defendant should be committed to prison for days, for [*as the case may be*] refusing to be sworn:

[*or* for refusing to answer such questions as aforesaid to the satisfaction of the judge;]

[*or* for contracting the said debt under false pretences *or* by means of fraud or breach of trust *or* without reasonable expectation of being able to pay the same;]

[*or* for making a gift or transfer of part of his property with intent to defraud his creditors;]

[*or* for having charged *or* removed *or* concealed part of his property, with intent to defraud his creditors;]

[*or* for not having satisfied the said judgment and costs, having had sufficient means and ability so to do;]

These are therefore to require you the said high bailiff, bailiffs, and others, to take the defendant, and to deliver him to the governor or keeper of the [*prison used by the Court*], and you the said governor or keeper to receive the defendant, and him safely keep in the said prison for days from the arrest under this warrant, or until he shall be sooner discharged by due course of law.

Dated this [*insert date of order*] day of 186 .

E. F.

Registrar of the Court.

	£	*s.*	*d.*
Amount of judgment or order, including costs . .			
Costs of warrant against the goods (if any) . .			
Cost of previous judgment summonses, hearings, and commitments			
Costs of last summons and poundage on this warrant			
Paid into Court			
Amount unpaid and due on judgment			
Deduct amount of instalments at *s.* per month, which were not required to have been paid before the date of this warrant			
Amount upon the payment of which the prisoner is to be discharged			

This warrant *remains in force one year* from the date thereof.

75.

9 & 10 Vict. c. 95, s. 100.

ORDER FOR PAYMENT BY INSTALMENTS ON A JUDGMENT SUMMONS.

Whereas the plaintiff obtained a judgment of this Court [*or* of the County Court of holden at] against the defendant for the sum of £ for his debt [*or* damages], and costs, upon which judgment and the subsequent process issued thereon the sum of £ is still due.

And whereas a summons was, at the instance of the plaintiff, duly issued out of this Court, by which the defendant was required to appear personally at this Court this day to answer

such questions as might be put to him pursuant to sect. 98 of 9 & 10 Vict. c. 95, in relation to such debt [*or* damages].

Acknowledgment of Payment into Court.

Date.	£	s.	d.	Received by

It is ordered, that the Defendant do pay the amount still due on the said judgment, and the costs of the said summons and its hearing, as stated at the foot of this order, to the registrar of this Court, by instalments of £ for every days; the first payment to be made on the day of 186 .

In case default be made in payment of any one of such instalments, and execution issue, it shall be for the whole of the above amount then remaining due.

	£	s.	d.
Amount remaining due			
Costs of judgment summons and its hearing . .			
	£		

76.

CERTIFICATE FOR THE DISCHARGE OF A DEFENDANT FROM CUSTODY. 9 & 10 Vict. c. 95, s. 116.

I hereby certify, that the defendant, who was committed to your custody by virtue of a warrant of commitment under the seal of this Court [*or* of the County Court of holden at], bearing date the day of 186 , has paid and satisfied the sum of money for the non-payment whereof he was so committed, together with all costs due and payable by him in respect thereof; and that the defendant may, in respect of such warrant, be forthwith discharged out of your custody.

Given under the seal of the Court, this day of 186 .

By leave of the judge of the Court,
Registrar of the Court.

To the Governor or Keeper of

77.

ORDER FOR A NEW TRIAL.

It is ordered, that the judgment in this case, and all subsequent proceedings thereon, be set aside, and a new trial had between the parties on [*set out the terms or conditions, if any, on which the order is made*].

78.

ORDER TO RESCIND A FORMER ORDER. & 10 Vict. c. 95, s. 100.

It is ordered that the order of this Court in this action, bearing date the day of 18 , be rescinded.

79.

INTERPLEADER SUMMONS TO EXECUTION CREDITOR.

No. of Plaint.

In the County Court of holden at
(Seal.)

Between A. B., Plaintiff,
and
C. D., Defendant.

Whereas [*here insert the name, address, and description of claimant, so far as is then known*] hath made a claim to [certain goods or chattels [*or* moneys, etc.] taken in execution under process issuing out of this Court, at your instance] [*or* certain rent alleged to be due to him]:

You are therefore hereby summoned to appear at a Court to be holden at on the day of 18 , at the hour of in the noon, when the said claim will be adjudicated upon, and such order made thereupon as to the judge shall seem fit.

Dated this day of 186 .

Registrar of the Court.

To the Execution Creditor.

NOTE.—*The Claimant is called upon to give the particulars of his claim, which you may inspect on application at the office of the registrar of this Court, four days before the day of hearing.*

80.

INTERPLEADER SUMMONS TO A CLAIMANT SETTING UP A CLAIM TO THE GOODS OR THE PROCEEDS THEREOF.

[*Name, address, and description of claimant*], you are hereby summoned to appear at a Court to be holden at on the day of 186 , at the hour of in the noon, to support a claim made by you to certain goods and chattels [*or* moneys, etc.] taken in execution under process issued in this action at the instance of [*the execution creditor*], and in default of your then establishing such claim the said goods and chattels will then be sold [*or* the said moneys, etc. paid over] according to the exigency of the said process; and take notice, that you are hereby required, five days before the said day, to deliver to the officer in charge of the said process, or leave at my office, particulars of the goods and chattels which [*or* the proceeds whereof] are claimed by you, and of the grounds of your claim; and in such particulars you shall set forth fully your name, address, and description; and take notice, that in the event of your not giving such particulars as aforesaid your claim will not be heard by the Court.

To [*the claimant above named*].

81.

INTERPLEADER SUMMONS TO A CLAIMANT SETTING UP A CLAIM TO RENT IN RESPECT OF THE PREMISES UPON WHICH THE EXECUTION WAS LEVIED.

[*Name, address, and description of claimant*], you are hereby

summoned to appear at a Court to be holden at on the day of 186 , at the hour of in the noon, to support a claim made by you to certain rent alleged by you to be due to you in respect of and issuing out of certain premises upon which certain goods and chattels were taken in execution under process of this Court in this action at the instance of [*the execution creditor*]; and in default of your then establishing such claim the said goods and chattels will then be sold, and the proceeds thereof paid over according to the exigency of the said process [*or*, if such goods and chattels shall have been then sold, then the proceeds of such sale will be paid over according to the exigency of the said process]; and take notice, that you are hereby required, five days before the said day, to deliver to the officer in charge of the said process, or leave at my office, particulars of the amount of the rent claimed by you, and of the period for which and of the premises in respect of which you claim such rent, and of the grounds of your claim; and in such particulars you shall set forth fully your name, address, and description; and take notice, that in the event of your not giving such particulars, your claim will not be heard by the Court.

To [*the claimant above named*].

82.

INTERPLEADER SUMMONS TO AN EXECUTION CREDITOR, AND TO THE HIGH BAILIFF WHERE CLAIMANT CLAIMS DAMAGES AS WELL AS THE GOODS SEIZED.

No. of Plaint.

In the County Court of holden at

(Seal.)

Between A. B., Plaintiff,
and
C. D., Defendant.

Whereas E. F. of hath made a claim to certain goods and chattels [*or moneys, etc.*] taken in execution under process issuing out of this Court at your instance, and hath also claimed from you and from the high bailiff of this Court the sum of £ for damages arising out of the said execution:

Insert residence and description of claimant.

You and the high bailiff are therefore hereby summoned to appear at a Court to be holden at the day of 186 , at the hour of in the noon, when the said claim, both as to the said goods and chattels, and as to the said damages, will be adjudicated upon, and such order made thereupon as the judge shall seem it.

To the Execution Creditor and to the High Bailiff of this Court.

NOTE.—*The claimant is called upon to give the particulars of his claim, which you may inspect, on application at the office of the registrar of this Court, four days before the day of hearing.*

83.

INTERPLEADER SUMMONS TO A CLAIMANT SETTING UP A CLAIM TO DAMAGES AS WELL TO THE GOODS OR THE PROCEEDS THEREOF.

No. of Plaint.

In the County Court of holden at
(Seal.)

Between A. B., Plaintiff, and C. D., Defendant.

[*Name, address, and description of claimant*] you are hereby summoned to appear at a Court to be holden at on the day of 186 , at the hour of in the noon, to support a claim made by you to certain goods and chattels [*or* moneys, etc.] taken in execution under process issued in this action at the instance of [*the execution creditor*], and also for damages arising out of such execution, and, in default of your then establishing such claim, the said goods and chattels will then be sold [*or* the said moneys paid over], according to the exigency of the said process: and take notice that you are hereby required five days before the said day to deliver to the officer in charge of the said process, or leave at my office, particulars of the goods and chattels which [*or* the proceeds whereof] are claimed by you, and of the grounds of your claim, and also of the grounds upon which you claim damages, and you must also state in such particulars the amount of the damages you claim, and the party from whom you claim the same, and in such particulars you shall set forth fully your name, address, and description; and take notice that in the event of your not giving such particulars as aforesaid your claim will not be heard by the Court.

To [*the claimant above named*].

84.

ORDER ON AN INTERPLEADER SUMMONS WHERE THE CLAIM IS NOT ESTABLISHED.

Between A. B., Plaintiff,
and
C. D., Defendant,
and
E. F., Claimant.

It is this day adjudged touching the claim of E. F. to certain goods and chattels [*or* moneys, etc.] taken in execution in this action [*or* to certain rent alleged to be due to him], that the said goods and chattels [*or* moneys, etc. or part thereof, to wit, etc., specifying them,] are the property of the execution debtor, [*or* that there is no rent due to the said E. F.]

And it is ordered, that the costs of this proceeding, amounting to be paid by the said E. F. to the registrar of this Court on or before the day of for the use of the execution creditor.

85.

ORDER ON AN INTERPLEADER SUMMONS WHERE THE CLAIM IS ESTABLISHED.

It is this day adjudged, touching the claim of E. F. to certain goods and chattels [*or* moneys, etc.] taken in execution in this action [*or* to certain rent alleged to be due to him], that the said goods and chattels [*or* moneys, etc., *or* part thereof, to wit, specifying them] are his property [*or* that rent to the amount of £ is due to him].

And it is ordered, that the said [*execution creditor*] do pay to the registrar of this Court, for the use of the said E. F., £ for costs, on before the day of 186 .

86.

ORDER ON AN INTERPLEADER SUMMONS WHERE BOTH GOODS AND DAMAGES ARE CLAIMED, AND THE CLAIM TO NEITHER IS ESTABLISHED.

In the County Court of No. of Plaint. holden at

(*Seal.*)

Between A. B., ... Plaintiff,

and

C. D., ... Defendant.

And between E. F., ... Claimant,

and

The Execution Creditor and the High Bailiff of this Court, ... Respondents.

It is this day adjudged touching the claim of E. F. to certain goods and chattels [*or* moneys, etc.] taken in execution in this action, and for damages arising out of the said execution, and which E. F. claims against [*the execution creditor*] and the high bailiff of this Court, that the said goods and chattels [*or* moneys, etc., or part thereof, *describe the part*] are the property of [*the execution debtor*], and that the said E. F. is not entitled to recover any damages from either [*the execution creditor*] or the high bailiff of this Court.

And it is ordered that the costs of this proceeding, amounting to £ , be paid by the said E. F. to the registrar of this Court on or before the day of 186 , as to £ , part thereof, for the use of the execution creditor, and as to £ the residue thereof, for the use of the high bailiff of this Court.

87.

ORDER ON AN INTERPLEADER SUMMONS WHERE BOTH GOODS AND DAMAGES ARE CLAIMED, AND THE CLAIM TO BOTH IS ESTABLISHED.

(*Same heading as No.* 86.)

It is this day adjudged, touching the claim of E. F. to certain goods and chattels [*or* moneys, etc.] taken in execution in this action, and for damages arising out of the said execution, and which E. F. claimed against the high bailiff of this Court that the said goods and chattels [*or* moneys, etc., or part thereof, *specifying them*] are the property of E. F., and that E. F. is entitled to recover the sum of £ for damages arising out of the said executions against the high bailiff of this Court:

If the claim for damages be against the execution creditor as well as against the high bailiff, so state it.

And it is ordered that the high bailiff of this Court do pay the said sum of £ for damages, and the sum of £ for costs, and the execution creditor the sum of £ for costs, to the registrar of this Court, for the use of the said E. F., on or before the day of 186 .

To the Execution Creditor and
the High Bailiff of this Court.

88.

ORDER ON AN INTERPLEADER SUMMONS WHERE BOTH GOODS AND DAMAGES ARE CLAIMED, AND THE CLAIM TO THE GOODS IS, BUT THAT TO DAMAGES IS NOT, ESTABLISHED.

(*Same heading as No.* 86.)

It is this day adjudged, touching the claim of E. F. to certain goods and chattels [*or* moneys, etc.] taken in execution in this action, and for damages arising out of the said execution, and which E. F. claims against the execution creditor and the high bailiff of this Court, that the said goods and chattels [*or* moneys, etc., *or* part thereof, *specifying them*] are the property of the said E. F., but that the said E. F. is not entitled to recover any damages from either the execution creditor or the high bailiff of this Court:

And it is ordered that the execution creditor do pay to the registrar of this Court, on or before the day of 186 , the sum of £ for costs for the use of the said E. F., and that the said E. F. do pay to the registrar of this Court, on or before the day of 186 , the sum of £ for costs, for the use of the high bailiff of this Court.

To the Execution Creditor and
to E. F., the Claimant.

89.

ORDER ON AN INTERPLEADER SUMMONS WHERE BOTH GOODS AND DAMAGES ARE CLAIMED, AND THE CLAIM TO THE GOODS IS NOT, BUT THE CLAIM TO DAMAGES IS, ESTABLISHED.

(*Same heading as No.* 86.)

This may arise where the bailiff is guilty of some wrongful act in taking property of the execution debtor out of the possession of the claimant.

It is this day adjudged, touching the claim of E. F. to certain goods and chattels [*or* moneys, etc.] taken in execution in this action, and for damages arising out of the said execution, and which E. F. claims against the execution creditor and the high bailiff of this Court, that the said goods and chattels [*or* moneys, etc.] are the property of the execution debtor, and that the said E. F. is entitled to recover £ for damages from the high bailiff of this Court, but not any damages from the execution creditor:

And it is ordered that the said E. F. do pay to the registrar of this Court on or before the day of 186 , the sum of £ for costs for the use of the execution creditor, and that the high bailiff of this Court do pay to the registrar of this Court, on or before the day of 186 , the sum of £ for costs, for the use of the said E. F.

To E. F., the Claimant, and
the High Bailiff.

90.

CLAIM OF AN EXECUTION CREDITOR FOR DAMAGES FROM A HIGH BAILIFF UNDER 30 & 31 VICT. C. 142, S. 31.

No. of Plaint.
In the County Court of holden at
Between A. B., Plaintiff,
and
C. D., Defendant.

Take notice that I, the execution creditor, claim the sum of £ from you, the high bailiff of this Court, for damages arising out of a certain execution in this cause, and that the grounds of my claim are as follows: [*here state the grounds of the claim, e.g.* for that you, having seized certain goods and chattels of and belonging to the execution debtor, under process issued from this Court at my instance, wrongfully, and without lawful excuse, withdrew from the possession of the said goods and chattels, whereby I was deprived of the fruits of the said execution].

Dated this day of 186 .

Execution Creditor.

To the High Bailiff
of this Court.

91.

ORDER ON AN INTERPLEADER SUMMONS BY EXECUTION CREDITOR AGAINST A HIGH BAILIFF WHERE THE CLAIM TO DAMAGES IS ESTABLISHED.

No. of Plaint.
In the County Court of holden at
(*Seal.*)
Between A. B., ... Plaintiff,
and
C. D., ... Defendant.
And between the Execution Creditor . Claimant,
and
The High Bailiff of this Court . . . Respondent.

It is this day adjudged, touching the claim of the execution creditor in this cause, against the high bailiff of this Court for damages arising out of an execution in this cause in which process issued from this Court at the instance of the said the execution creditor, directing the high bailiff to levy the sum of £ of and from the goods and chattels of [*the execution debtor*], that the said the execution creditor, is entitled to recover from the high bailiff of this Court the sum of £ for damages arising out of the said execution.

And it is ordered that the high bailiff of this Court do, on or before the day of 186 , pay to the registrar of this Court the said sum of £ and also the further sum of £ for costs for the use of the said , the execution creditor.

To the High Bailiff
of this Court.

92.

ORDER ON AN INTERPLEADER SUMMONS BY AN EXECUTION CREDITOR AGAINST A HIGH BAILIFF WHERE THE CLAIM TO DAMAGES IS NOT ESTABLISHED.

(*Same heading as No.* 91.)

It is this day adjudged touching the claim of the execution creditor in this cause, against the high bailiff of this Court, for damages arising out of an execution in this cause in which process issued from this Court at the instance of the said the execution creditor, directing the said high bailiff of this Court to levy the sum of £ of and from the goods and chattels of [*the execution debtor*], that the said the execution creditor is not entitled to recover from the said high bailiff of this Court any damages in respect of or in any way arising from the said execution. And it is ordered that the said the execution creditor do on or before the day of 186 pay to the registrar of this Court the sum of £ for costs, for the use of the said high bailiff of this Court.

To the Execution Creditor.

93.

ORDER ON AN INTERPLEADER SUMMONS WHERE BOTH GOODS AND DAMAGES ARE CLAIMED AND MONEY IS PAID INTO COURT IN RESPECT OF THE LATTER, AND THE CLAIM TO THE GOODS IS ESTABLISHED AND THE MONEY PAID INTO COURT IS FOUND TO BE SUFFICIENT TO SATISFY THE DAMAGES.

(*Same heading as No.* 86.)

It is this day adjudged, touching the claim of E. F. to certain goods and chattels [*or* moneys, etc.] taken in execution in this action, and for damages arising out of the said execution, and which E. F. claimed against the high bailiff of this Court, and in respect of which damages hath paid into Court the sum of £ , that the said goods and chattels [*or* moneys, etc., *or* part thereof, *specifying them or it*] are the property of E. F., but that the said sum paid into Court is sufficient to satisfy all damages arising out of the said execution.

And it is ordered, that the execution creditor do pay to the registrar of this Court the sum of £ for costs for the use of E. F., and that E. F. do pay to the registrar of this Court the sum of £ for costs for the use of the high bailiff, on or before the day of 186 .

To the Execution Creditor and to E. F.

94.

ORDER ON AN INTERPLEADER SUMMONS WHERE BOTH GOODS AND DAMAGES ARE CLAIMED, AND MONEY IS PAID INTO COURT IN RESPECT OF THE LATTER, AND THE CLAIM TO THE GOODS IS ESTABLISHED, AND THE MONEY PAID INTO COURT IS ADJUDGED INSUFFICIENT.

(*Same heading as No.* 86.)

It is this day adjudged, touching the claim of E. F. to certain

goods and chattels [*or* moneys, etc.] taken in execution in this action, and for damages arising out of the said execution, and which E. F. claims against the high bailiff, and in respect of which damages (*a*) has paid into Court the sum of £ , that the said goods and chattels [*or* moneys, etc.] are the property of the said E. F., and that the said sum of £ paid into Court is not sufficient to satisfy the damages arising out of the said execution, and that the said E. F. is entitled to recover the further sum of £ for damages from the high bailiff.

And it is ordered that the execution creditor do pay to the registrar of this Court, on or before the day of 186 , the sum of £ for costs for the use of the said E. F., and that the high bailiff do pay to the registrar of this Court, on or before the last-mentioned day, the said further sum of £ for damages, and also the sum of £ for costs, for the use of the said E. F.

To the Execution Creditor
and the High Bailiff.

95.

ORDER ON AN INTERPLEADER SUMMONS BY AN EXECUTION CREDITOR AGAINST A HIGH BAILIFF FOR DAMAGES, AND WHEN THE HIGH BAILIFF PAYS MONEY INTO COURT.

(*Same heading as No.* 91.)

It is this day adjudged touching the claim of the execution creditor in this cause against the high bailiff of this Court for damages arising out of an execution in this cause, in which process issued from this Court at the instance of the said the execution creditor, directing the said high bailiff of this Court to levy the sum of £ of and from the goods and chattels of [*the execution debtor*], and in respect of which damages the high bailiff hath paid into Court the sum of £ , that the sum paid into Court is sufficient to satisfy all damages arising out of the said execution [*or* that the sum paid into Court is not sufficient to satisfy the damages arising out of the said execution, and that the said the execution creditor is entitled to recover the further sum of £ for damages from the high bailiff].

And it is ordered that the said , the execution creditor, do pay to the registrar of this Court, on or before the day of 186 , the sum of £ for costs for the use of the high bailiff [*or* that the high bailiff do pay to the registrar of this Court, on or before the day of 186 , the said further sum of £ for damages, and also the sum of £ for costs, for the use of the execution creditor].

To the
Execution Creditor.
[*or* To the High Bailiff
of this Court.]

(*a*) The words "the high bailiff" appear to be required here.

96.

9 & 10 Vict. c. 95, s. 118.

WARRANT OF EXECUTION AGAINST THE GOODS OF CLAIMANT.

Whereas at a Court holden at on the day of 18 , the plaintiff, by the judgment of the said Court, recovered against the defendant the sum of for debt [*or* damages] and for costs:

And whereas the defendant, by an order of the Court, was ordered to pay the same to the registrar of the Court:

And whereas default having been made in payment according to the said order, an execution issued against the goods of the defendant, under which certain goods and chattels were seized, in respect of which E. F. of, etc. made claim, and which claim was heard and decided upon at a Court held at on the day of 18 , and it was adjudged that the goods so seized under the said execution were the property of the defendant [*or* that certain rent alleged by the said E. F. of, etc. to be due to him was not so due]:

And it was ordered that the costs of that proceeding, amounting to the sum of £ should be paid by the claimant to the registrar of the said Court, on or before the day of 18 :

And whereas default has been made in payment according to the said last-mentioned order:

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said claimant wheresoever they may be found within the district of this Court (excepting the wearing apparel and bedding of the said claimant or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, including the costs of this execution, and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the claimant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of the Court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court this day of 186 .

By the Court.

Registrar of the Court.

To the High Bailiff of the said Court, and others the Bailiffs thereof.

	£	*s.*	*d.*
Costs adjudged			
Poundage for issuing this warrant . .			
Total amount to be levied . .			

19 & 20 Vict. c. 108, s. 46.

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said claimant.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 186 .

97.

BOND WHERE A PLAINTIFF IS APPELLANT.

A sum sufficient to cover the *costs of appeal*, say £20, being double the estimated amount. *For Notice of Sureties and Affidavit of Justification, See forms* 15 *and* 16.

Know all men by these presents that we, A. B. of, etc., and C. D. of, etc., and E. F. of, etc., are jointly and severally held and firmly bound to G. H. of, etc., in £ , to be paid to the said G. H., or his certain attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves, and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this day of one thousand eight hundred and .

Whereas an action is now depending in the County Court of holden at wherein the above-bounden A. B. is plaintiff and the above-named G. H. is defendant:

And whereas the said action came on to be tried in the said Court on the day of when a judgment was given for the said G. H.:

And whereas the said A. B., being dissatisfied with such judgment, gave due notice to the said G. H. of his the said A. B.'s intention to appeal from the same to Her Majesty's Court of at Westminster, according to the statute in such case made and provided:

And whereas it is thereby provided that the party who shall appeal as aforesaid shall give security, to be approved by the registrar of the Court aforesaid, for the costs of the appeal, whatever be the event thereof:

And whereas the above-named C. D. and E. F., at the request of the said A. B., have agreed to enter into the above-written obligation for the purposes aforesaid, and the security intended to be hereby given has been approved of by , the registrar of the said County Court, as appears by his allowance in the margin hereof: Now the condition of this obligation is such, that if the above-bounden A. B., C. D., and E. F., any or either of them, shall pay unto the said G. H., his executors, administrators, or assigns, the costs of the said appeal, as the said Court of Appeal shall order, then this obligation shall be void, otherwise shall remain in full force.

I approve of this bond. I. K., Registrar.

(L.S.) *This bond requires a stamp.*

A. B. (L.S.)
C. D. (L.S.)
E. F. (L.S.)

Signed, sealed, and delivered by the above-bounden in the presence of

NOTE.—*If a deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond, and will not require a stamp.*

19 & 20 Vict. c. 108, s. 71.

98.

BOND WHERE DEFENDANT IS APPELLANT.

A sum sufficient to cover the *costs of appeal*, say £20, being double the estimated amount, and also double the amount of judgment.

Know all men by these presents that we A. B. of, etc., and C. D. of, etc., and E. F. of, etc., are jointly and severally held and firmly bound to G. H. of, etc., in £ to be paid to the said G. H., or his certain attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves, and each and every of us, in the whole, our and each of our

heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this day of one thousand eight hundred and .

Whereas an action is now depending in the County Court of holden at wherein the above-named G. H. is plaintiff, and the above-bounden A. B. is defendant:

And whereas the said action came on to be tried in the said Court on the day of last, when a judgment was given for the said G. H. in the sum of £ :

And whereas the said A. B., being dissatisfied with such judgment, gave due notice to the said G. H. of his the said A. B.'s intention to appeal from the same to her Majesty's Court of at Westminster, according to the statute in such case made and provided:

This bond requires a stamp.

And whereas it is thereby provided that the party who shall appeal as aforesaid shall give security, to be approved by the registrar of the Court aforesaid, for the costs of the appeal, whatever be the event thereof, and also for the amount of the judgment if such party be the defendant, and the appeal be dismissed:

And whereas the above-named C. D. and E. F., at the request of the said A. B., have agreed to enter into the above-written obligation, for the purposes aforesaid, and the security intended to be hereby given has been approved of by the registrar of the said County Court, as appears by his allowance in the margin hereof: Now the condition of this obligation is such, that if the above-bounden A. B., C. D., and E. F., any or either of them, shall pay unto the said G. H., his executors, administrators, or assigns, the costs of the said appeal, as the said Court of Appeal shall order (and shall also in case the said appeal shall be dismissed, pay to the said G. H., his executors, administrators, or assigns, the said sum of £ [*amount of the judgment* (*a*)], then this obligation shall be void, otherwise shall remain in full force.

I approve of this bond. I. K., Registrar. (L.S.)

(*a*) To be omitted, if amount previously paid into Court.

A. B. (L.S.)
C. D. (L.S.)
E. F. (L.S.)

Signed, sealed, and delivered by the above-bounden in the presence of

19 & 20 Vict. c. 108, s. 71.

NOTE.—*If a deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond, and will not require a stamp.*

99.

CASE ON APPEAL.

In the County Court of holden at .
On appeal to the Court of

Between A. B., Plaintiff,
and
C. D., Defendant.

This is an action [*here state the cause of action and the facts*].
The question for the opinion of the Court of is;—
First. [*Here state the question for the opinion of the Court*].

[Signature of Judge].

100.

ADMISSION OF CLAIM OR PART OF CLAIM UNDER SECT. 8 OF 13 & 14 VICT. c. 61. 13 & 14 Vict. c. 61, s. 8.

I, the defendant, do hereby confess and admit that the sum of £ the amount claimed [*or* the sum of £ being part of the amount claimed by the plaintiff in this action] is due to him from me [and that I will pay the same by instalments of].

Dated this day of 186 .

Defendant.

Signed in the presence of

This paper marked A. *is the statement referred to in the annexed Affidavit.*

101.

AFFIDAVIT OF SIGNATURE TO ADMISSION, SECT. 8 OF 13 & 14 VICT. c. 61. 13 & 14 Vict. c. 61, s. 8.

I, of , gentleman, an attorney of her Majesty's Court of at Westminster, make oath and say, that I was present on the day of one thousand eight hundred and sixty , and did see the above-named defendant sign the statement hereunto annexed, marked with the letter A., and that the name set to the said statement is in the handwriting of the defendant, and that the name set to the said statement as the witness attesting the same is in my handwriting.

102.

NOTICE TO PLAINTIFF OF ADMISSION OF CLAIM UNDER SECT. 8 OF 13 & 14 VICT. c. 61. 13 & 14 Vict. c. 61, s. 8.

I do hereby give you notice, that the defendant has filed a statement confessing and admitting the amount claimed by you [and proposing to pay the same by instalments of], and that it will not be necessary for you to attend on the day of hearing [unless you object to receive the same by instalments as proposed], but judgment will not be entered unless you shall pay to the registrar on or before such day the sum of being the fee for the judgment, or shall remit the said sum to the registrar by post-office order or otherwise. 19 & 20 Vict. c. 108, s. 78.

103.

NOTICE TO PLAINTIFF OF ADMISSION OF PART OF CLAIM, UNDER SECT. 8 OF THE 13 & 14 VICT. c. 61. 13 & 14 Vict. c. 61, s. 8.

I do hereby give you notice, that the defendant has filed a statement confessing and admitting £ , part of the amount claimed by you [and proposing to pay the same by instalments of .

If you consent to accept the amount so admitted [and to the mode of payment by instalments as proposed] it will not be necessary for you to attend on the day of hearing; but judgment will not be entered unless you shall pay to the registrar on or before such day the sum of being the fee for the

19 & 20 Vict. c. 108, s. 78.

judgment, or shall remit the said sum to the registrar by post-office order, or otherwise.

If, however, you do not consent to accept the sum so admitted, in satisfaction of your claim, you must be prepared to prove the same.

104.

ADMISSION UNDER SECT. 9 OF 13 & 14 VICT. C. 61.

13 & 14 Vict. c. 61, s. 9.

We, the plaintiff and defendant, do hereby agree that the amount of the debt or demand due from the defendant to the plaintiff is £ and that the same, with £ for the plaintiff's costs, and £ the Court fees, shall be paid to the registrar of the Court at his office, in manner following, viz.:

Dated this day of 186 .

_____ } Signatures of Plaintiff and Defendant.

_____ }

Signed in the presence of

This paper marked A. *is the statement referred to in the annexed Affidavit.*

105.

13 & 14 Vict. c. 61, s. 9.

AFFIDAVIT OF SIGNATURE UNDER SECT. 9 OF 13 & 14 VICT. C. 61.

I, of gentleman, an attorney of Her Majesty's Court of at Westminster, make oath and say, that I was present on the day of one thousand eight hundred and sixty , and did see the plaintiff and defendant respectively sign the statement hereunto annexed, marked with the letter A., and that the name set to the said statement is in the handwriting of the plaintiff, and that the name set to the said statement is in the handwriting of the defendant, and that the name set to the said statement, as the witness attesting the same is in my handwriting.

106.

NOTICE TO DEFENDANT WHERE ANY CHANGE OF PLAINTIFF.

Whereas A. B., at a Court holden at on the day of 186 , obtained a judgment against you for the sum of £ for and costs, which judgment now remains unsatisfied: And whereas the said A. B. has since died [*or, as the case may be*], and E. F. of [*address and description*] is his executor [*or state other representative character*] this is to give you notice that the name of the said E. F. has been substituted as plaintiff for that of the original plaintiff, and that he is at liberty therefore to take the same proceedings on the judgment that the original plaintiff was entitled to take.

	£	s.	d.
Due on judgment . . .	:	:	

To the Defendant.

[N.B.—*Where the judgment in the original cause was for the defendant, and he has died, or as the case may be, the above form must be altered accordingly.*]

107.

SUMMONS IN NATURE OF SCIRE FACIAS WHERE ANY CHANGE OF DEFENDANT.

Whereas the plaintiff, at a Court holden at on the day of 186 , obtained a judgment against C. D., of [*name, address, and description of* C. D.], for the sum of £ for and costs, which judgment now remains unsatisfied: And whereas the said C. D. has since died [*or* state cause of revival being necessary], and you are his executor [*or* state other representative character], you are hereby summoned to appear at a Court to be holden at on the day of 186 , at the hour of in the noon, to show cause why judgment should not be entered up against you, at the suit of the plaintiff, on the judgment so obtained, and why execution should not issue thereon.

	£	*s.*	*d.*
Due on judgment . .	:	:	

To the Defendant.

[N.B.—*Where the judgment in the original cause was for the defendant the above form must be altered accordingly.*]

108.

JUDGMENT ON SCIRE FACIAS ON CHANGE OF DEFENDANT.

Whereas the plaintiff at a Court holden at on the day of 186 , obtained a judgment against C. D. for the sum of £ for and costs, and which judgment now remains unsatisfied: And whereas the said C. D. has since died [or *state other circumstances requiring revival of judgment*], and the defendant is his executor [or *state other representative character*].

[*Conclude according to the rules and forms as to executors and the defence made.*]

	£	*s.*	*d.*
Due on judgment .	:	:	

[N.B.—*Where the judgment in the original cause was for the defendant the above form must be altered accordingly.*]

109.

JUDGMENT AGAINST AN EXECUTOR WHO HAS WASTED ASSETS.

No. of Plaint.

In the County Court of holden at
Between A. B., Plaintiff,
and
C. D. Executor [*or* Administrator] of deceased Defendant.

Upon hearing this cause at a Court this day holden, it is adjudged that the plaintiff do recover against the defendant the sum of £ for and £ for costs.

And it is ordered, that the defendant do pay the same to the registrar of this Court, on or before the day of 18 .

It is also adjudged that the defendant, being the executor

[*or* administrator] of the said deceased, has made away with, wasted, and put to his own use divers goods and chattels [*or* moneys, *as the case may be*], to the amount of the said sum, which were the property of the said deceased, and which came to the hands of the defendant as executor [*or* administrator] as aforesaid, to be administered.

Wherefore it is ordered, that if the defendant shall make default in the payment of the said sum, the same shall be levied by distress and sale of the goods and chattels which were of the said deceased, and which came to the hands of the defendant as executor [*or* administrator], if the defendant has so much thereof in his hands to be administered; and if he has not, then that the said sums shall be levied of the proper goods and chattels of the defendant.

110.

JUDGMENT AGAINST AN EXECUTOR WHO HAS DENIED HIS REPRESENTATIVE CHARACTER.

Upon hearing this cause at a Court this day holden, it is adjudged that the plaintiff do recover against the defendant the sum of £ for and £ for costs.

And it is ordered that the defendant do pay the same to the registrar of this Court, on or before the day of 186 .

And the defendant having denied that he is executor [*or* administrator] of the said deceased, it appears to the Court that he is executor [*or* administrator] of the said deceased.

Wherefore it is ordered, that if the defendant shall make default in the payment of the said sums the same shall be levied by distress and the sale of the goods and chattels which were of the said deceased, and which came to the hands of the defendant as executor [*or* administrator], if the defendant has so much thereof in his hands to be administered; and if he has not, then that the said sums shall be levied of the proper goods and chattels of the defendant.

111.

JUDGMENT AGAINST AN EXECUTOR WHO HAS PLEADED A RELEASE OF THE CLAIM TO HIMSELF.

Upon hearing this cause at a Court this day holden, it is adjudged that the plaintiff do recover against the defendant the sum of £ for and £ for costs.

And it is ordered that the defendant do pay the same to the registrar of this Court on or before the day of 186 .

And the defendant having alleged that the plaintiff's claim had been released to him, it appears to the Court that he has failed to prove such release:

Wherefore it is ordered, that if the defendant shall make default in the payment of the said sums, the same shall be levied by distress and sale of the goods and chattels which were of the said deceased, and which came to the hands of the defendant as executor [*or* administrator], if the defendant has so much thereof in his hands to be administered; and if he has not, then that the said sums shall be levied of the proper goods and chattels of the defendant.

112.

JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR WHO ADMITS HIS REPRESENTATIVE CHARACTER AND DENIES THE DEMAND.

Upon hearing this cause at a Court this day holden, it is adjudged that the plaintiff do recover against the defendant the sum of £ for and £ for costs.

And it is ordered that the defendant do pay the same to the registrar of this Court on or before the day of 186 .

And the defendant having admitted his representative character, but denied the plaintiff's demand, and the plaintiff having proved the same, it is further ordered, that if the defendant shall make default in payment of the said sums, the same shall be levied as follows: the sum of £ [*the debt or damage and costs*] of the goods and chattels which were of the said deceased, and which came to the hands of the defendant as executor [*or* administrator], if the defendant has so much thereof in his hands to be administered; and if he has not, then that the sum of £ [*the costs*] be levied upon the proper goods of the defendant.

113.

JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR WHERE HE ADMITS HIS REPRESENTATIVE CHARACTER, BUT DENIES THE DEMAND, AND ALLEGES TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND THE PLAINTIFF PROVES HIS DEMAND, AND THE DEFENDANT PROVES ADMINISTRATION.

Upon hearing this cause at a Court this day holden, it is adjudged that the plaintiff do recover against the defendant the sum of £ for and £ for costs.

And it is ordered that the defendant do pay the same to the registrar of this Court on or before the day of 186 .

And the defendant having admitted his representative character, but denied the plaintiff's demand, and having also alleged a total [*or* partial] administration of the goods of the said deceased, which came to the hands of the defendant as executor [*or* administrator] to be administered, it appears to the Court that the plaintiff has proved to the Court his demand, and also that the defendant has proved the administration alleged:

Wherefore it is ordered that in default of such payment the sum of £ being the costs incurred by the plaintiff in proving his demand, shall be levied on the goods and chattels which were of the said deceased, and which came to the hands of the defendant as executor [*or* administrator], if the defendant has so much thereof in his hands; and if he has not, then that it shall be levied of the proper goods and chattels of the defendant; and as to the sum of £ the plaintiff's demand, that it be levied of the goods and chattels of the said deceased which hereafter shall come to the hands of the defendant as executor [*or* administrator] as aforesaid to be administered.

And it is further ordered, that the plaintiff do pay to the registrar of the Court, on or before the day of 186 , the sum of £ being the costs incurred by the defendant in proving the administration alleged.

[N.B.—*If the defendant is shown to have some assets, the judgment must be for tha' amount de bonis testatoris, and for the residue quando acciderint.*]

114.

JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR WHERE THE DEFENDANT ADMITS HIS REPRESENTATIVE CHARACTER, BUT DENIES THE DEMAND, AND ALLEGES TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND THE PLAINTIFF PROVES HIS DEMAND, AND THE DEFENDANT DOES NOT PROVE THE ADMINISTRATION.

Upon hearing this cause at a Court this day holden, it is adjudged that the plaintiff do recover against the defendant the sum of £ for and £ for costs.

And it is ordered that the defendant do pay the same to the registrar of the Court on or before the day of 186 .

And the defendant having admitted his representative character, but denied the plaintiff's demand, and having also alleged a total [*or* partial] administration of the goods of the said deceased, which came to the hands of the defendant as executor [*or* administrator] to be administered, it appears to the Court that the plaintiff has proved to the Court his demand, and also that the defendant has not proved the administration alleged.

And it is further ordered that if the defendant shall make default in payment of the said sum, the same shall be levied as follows: the sum of £ [*debt and costs*] of the goods and chattels which were of the said deceased, and which came to the defendant as aforesaid, if the defendant has so much thereof in his hands to be administered; and if he has not, then that the residue of the sum of £ [*debt*] be levied of the goods and chattels of the said deceased which hereafter shall come to the hands of the defendant as executor [*or* administrator] as aforesaid to be administered; and that the sum of £ [*the costs*] be levied upon the proper goods of the defendant.

115.

JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR WHO ADMITS HIS REPRESENTATIVE CHARACTER AND THE PLAINTIFF'S DEMAND, BUT ALLEGES A TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND PROVES THE ADMINISTRATION.

Upon hearing this cause at a Court this day holden, it is adjudged that the plaintiff do recover against the defendant the sum of £ for , and it is ordered, that the defendant do pay the same to the registrar of this Court on or before the day of 186 .

And the defendant having admitted his representative character and also the plaintiff's demand, and having alleged a total [*or* partial] administration of the goods of the said deceased, which came to the hands of the defendant as executor [*or* administrator] to be administered, it appears to the Court that the defendant has proved to the Court the administration alleged

Wherefore it is ordered that in default of such payment the said sum of £ shall be levied of the goods and chattels of the said deceased which hereafter shall come to the hands of the defendant as executor [*or* administrator] as aforesaid to be administered.

And it is further ordered that the plaintiff do pay to the registrar of this Court, on or before the day of 186 , the sum of £ , being the costs incurred by the defendant in proving the administration alleged.

116.

JUDGMENT AGAINST AN EXECUTOR OR ADMINISTRATOR WHO ADMITS HIS REPRESENTATIVE CHARACTER AND THE PLAINTIFF'S DEMAND, BUT ALLEGES A TOTAL OR PARTIAL ADMINISTRATION OF ASSETS, AND DOES NOT PROVE THE ADMINISTRATION.

Upon hearing this cause at a Court this day holden, it is adjudged that the plaintiff do recover against the defendant the sum of £ for

And it is ordered that the defendant do pay the same to the registrar of this Court at on or before the day of 186 .

And the defendant having admitted his representative character, and also the plaintiff's demand, and having alleged a total [*or* partial] administration of the goods of the said deceased which came to the hands of the defendant as executor [*or* administrator] to be administered, it appears to the Court that the defendant has not proved to the Court the administration alleged.

And it is further ordered that if the defendant shall make default in payment of the said sum, the same shall be levied as follows: the sum of £ [*debt and costs*] of the goods and chattels which were of the said deceased, and which came to the defendant as aforesaid, if the defendant has so much thereof in his hands to be administered; and if he has not, then that the residue of the sum of £ [*debt*] be levied of the goods and chattels of the said deceased which hereafter shall come to the hands of the defendant as executor [*or* administrator] as aforesaid to be administered; and that the sum of £ [*the costs*] be levied upon the proper goods of the defendant.

117.

SUMMONS TO AN EXECUTOR OF PLAINTIFF'S INTENTION TO APPLY TO THE COURT WHERE ASSETS HAVE COME TO DEFENDANT'S HANDS SINCE JUDGMENT.

No. of Plaint.

In the County Court of holden at

(*Seal*).

Between A. B. [*address, description*], Plaintiff,

and

C. D., Executor [*or* Administrator] of deceased [*address, description*], Defendant.

The plaintiff having learnt that property of the deceased has come to your (the defendant's) hands as executor [*or* administrator] since the judgment herein to be administered [and that

you have withholden and wasted the same], intends to apply to the Court to be holden on the day of 186 , at the hour of in the noon, for an order that the debt [*or* damages] and costs shall be levied of the goods and chattels of the said deceased, if you have so much thereof to be administered [and that if you have not, then that it shall be levied of your proper goods and chattels], and that the costs be levied of your proper goods and chattels.

You are therefore hereby summoned to appear at the said Court at the time and place aforesaid, to answer touching the matters aforesaid.

To the executor or administrator
of the deceased.

118.

WARRANT OF EXECUTION AGAINST THE GOODS OF A TESTATOR.

Whereas at a Court holden at on the day of 186 , the plaintiff obtained a judgment against the defendant, as executor [*or* administrator] of the said deceased for the sum of for due and owing to the plaintiff by the said deceased in his lifetime, and the sum of for costs of suit:

And thereupon it was ordered by the Court, that the defendant should pay the same to the registrar of the Court, on or before the day of 18 [*or by instalments of for every days*]:

And whereas default has been made in payment according to the said order:

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels which were the property of the said deceased in his lifetime, in the hands of the defendant to be administered, wheresoever they may be found within the district of this Court (excepting the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, including the costs of this execution, and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, which were the property of the said deceased in his lifetime, which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, if the defendant hath so much thereof in his hands to be administered; and if he hath not so much thereof in his hands to be administered, then that you make and levy of the proper goods and chattels, money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant, the sum of for the costs and charges first above mentioned, and the costs of this execution and of levying the same, and to pay what you shall have so levied to the registrar of this Court, and make return of what

you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court this day of 186 .

By the Court,

Registrar of the Court.

To the High Bailiff of the said Court,
and others the Bailiffs thereof.

	£	s.	d.
Debt or damages adjudged . .			
Costs			
Paid into Court			
Remaining due			
Poundage for issuing this warrant			
Total amount to be levied			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 186 . 19 & 20 Vict c. 108, s. 46.

(*Warrants of execution upon the judgments given in pages* 139 *to* 146 *may be drawn from this form, altered accordingly from those forms.*)

119.

JUDGMENT AGAINST AN EXECUTOR ON A DEVASTAVIT.

Upon hearing the plaintiff's application in this cause at a Court this day holden, it is adjudged, that property of deceased has come to the hands of the defendant, as his executor [*or* administrator], since the judgment recovered herein, to be administered, and that the defendant has wasted the same property, whereby the judgment recovered herein remains unsatisfied. It is therefore ordered, that the defendant do pay the sum of £ recovered by [*or* remaining due upon] the judgment, together with the sum of £ the costs of this order, to the registrar of this Court, on or before [*as the case may be*].

And it is further adjudged, that if the defendant make default in payment thereof an execution shall issue to make and levy the above-mentioned sums of the goods and chattels of the said deceased, if the defendant has so much thereof in his hands to be administered; and if he has not, then to be made and levied of the proper goods and chattels of the defendant.

120.

ORDER OF REFERENCE.

By the consent of the plaintiff and defendant, it is, at a Court holden this day, ordered that all matters in difference in this cause [*and all other matters within the jurisdiction of this Court, in difference between the said parties*] be referred to of whose certificate, to be made or given on or before the day of 18 shall be entered as the judgment in this cause; and it is further ordered that the time for making or giving such certificate may be from time to time enlarged by the judge of the Court, in his discretion, for such time as he shall, by indorsement to be by him made on this order, direct; and that the said certificate, when made or given, may be referred back again to the said arbitrator at the like discretion of the said judge without the further consent of the said parties; and in case either of the said parties shall neglect or refuse to attend any appointment to be made by the said arbitrator for proceeding under this order, after two days' notice thereof in writing shall have been given to him by serving the same personally or by leaving it at his last or usual place of abode, the said arbitrator shall be at liberty to proceed *ex parte* on the matters of the said reference, and his certificate shall be as valid as if both the said parties had duly attended before him. And it is further ordered, that the costs of the said reference shall be in the discretion of the arbitrator, and that the costs of the action shall abide the event; and it is lastly ordered that the submission to arbitration shall not be revocable by either party.

121.

19 & 20 Vict. c. 108, ss. 50, 51.

SUMMONS TO A TENANT OR OTHER PERSON HOLDING OVER.

No. of Plaint.

In the County Court of holden at

(*Seal.*)

Between A. B., Plaintiff,
[*address, description*]
and
C. D., Defendant,
[*address, description*].

(*a*) Insert this when necessary.

(*a*) [*Issued* "by leave of the Court" *or* "by leave of the Registrar.]

You are hereby summoned to appear at a County Court to be holden at on the day of 186 at the hour of in the noon, to answer the plaintiff, wherefore you neglect or refuse to deliver up to him possession of a certain [*messuage, with appurtenances*, or *part of a house*, etc., or *as the case may be*] situate at .

And take notice that the plaintiff claims of you for rent [*or* mesne profits] [*or* for rent and mesne profits] the sum of £ for a period from the day of 186 to the day of 186 .

And further take notice, if you do not appear at the said Court, and show cause why you do not deliver up possession as aforesaid, the judge of the said Court may order that possession of the said premises be given by you to the plaintiff forthwith,

or on or before such day as the judge shall name, and that if such order be made and be not obeyed a warrant may issue to give possession to the plaintiff.

Dated the day of 186 .

Registrar of the Court.

To the Defendant.

	£	s.	d.
Costs of this summons	:		:
Claim for	:		:

At bottom of Summons.

TAKE NOTICE.—If the plaintiff in this action be not your immediate landlord, YOU MUST upon your being served with this summons, or if this summons shall come to your KNOWLEDGE, forthwith GIVE NOTICE thereof to your IMMEDIATE LANDLORD, and if you do NOT give such notice you will be liable, under sect. 53 of 19 & 20 Vict. c. 108, to forfeit to your immediate landlord THREE YEARS' RACKRENT of the premises held by you of him, in respect of which the summons shall have issued.

122.

SUMMONS UNDER SECT. 52 OF 19 & 20 VICT. C. 108.

You are hereby summoned to appear at a Court to be holden at on the day of 186 at the hour of in the noon, to answer the plaintiff why possession of a certain situate at should not be given up to the plaintiff, by reason of the rent payable in respect thereof by you being half a year in arrear, and the plaintiff having right by law to re-enter for the non-payment thereof.

If you shall pay to the registrar the rent in arrear, and the costs of this action, as stated at the foot of the summons, five clear days before the day you are required to appear to this summons, this action will cease.

And take notice, that if you do not pay such rent in arrear and costs, or appear at the said Court, and show cause why possession of the said should not be recovered against you, you may be ordered by the Court to give possession of such premises to the plaintiff, and that if such order be not obeyed, a warrant may issue to give possession to the plaintiff.

Dated this day of 186 .

Registrar of this Court.

	£	s.	d.
Costs of this summons	:		:

At bottom of Summons.

Take Notice.—If the plaintiff in this action be not your immediate landlord, you must, upon being served with this summons, or if this summons shall come to your knowledge, forthwith give notice thereof to your immediate landlord, and if you do not give such notice you will be liable, under sect. 53 of 19 and 20 Vict. c. 108, to forfeit to your immediate landlord three years' rackrent of the premises held by you of him, in respect of which the summons shall have issued.

123.

19 & 20 Vict. c. 108, ss. 50—52.

ORDER FOR RECOVERY OF TENEMENT.

Upon the hearing of this cause, at a Court holden this day, it is ordered, that the defendant do give to the plaintiff possession of a certain house [or *messuage with appurtenances*, or *part of certain house*, or *as the case may be*], situate at forthwith [*or* on the day of], and it is adjudged that the plaintiff do recover against the defendant the sum of £ for rent [*or* mesne profits, *or* for rent and mesne profits] and £ costs.

And it is ordered, that the defendant do pay to the registrar of the Court the sum [*or* sums] above mentioned on or before the day of 186 .

To the Defendant.

Take Notice.—That if you do not give such possession a warrant may issue requiring the bailiff of the Court to give possession of the said to the plaintiff, and to levy the sum above mentioned, together with further costs.

124.

19 & 20 Vict. c. 108 ss. 50–52.

WARRANT FOR GIVING POSSESSION OF TENEMENT.

Whereas at a Court holden at on the day of 18 , it was ordered by the Court, that the defendant should give the plaintiff possession of a certain [*as in summons*] situate at [*and that the plaintiff should recover against the defendant*] the sum of £ for rent [*or* mesne profits] [*or* rent and mesne profits] and costs.

And whereas the defendant has not obeyed the said order:

These are therefore to authorize and require you to forthwith give possession of the said hereinbefore-mentioned premises to the plaintiff:

And these are therefore further to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this Court (excepting the wearing apparel and bedding of the defendant or his family, and the tools and implements of his trade, if any, to the value of five pounds), the said sum, and the costs of this warrant and execution; and also to seize and take any money or bank-notes (whether of the Bank of England or any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the defendant, which may be there found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay the amount so levied to the registrar of this Court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court, this day of 186 .

By the Court,

Registrar of the Court.

To the High Bailiff of the said Court.

	£	s.	d.
Rent [*or* mesne profits] [*or* rent and mesne profits]			
Costs			
Poundage for issuing this warrant			
Total amount to be levied			

Notice.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 186 .

125.

SUMMONS IN EJECTMENT.

No. of Plaint.

In the County Court of holden at

(*Seal.*)

Between A. B., C. D., and E. F., Plaintiffs

[*Addresses, Descriptions*],

and

G. H., I. J., and K. L., Defendants,

[*Addresses, Descriptions.*]

You the above-named defendants, and all persons entitled to defend the possession of the property described in the statement hereunto annexed, situated in the parish within the district of this Court, to the possession whereof the above-named plaintiffs, some or one of them, claim to be [*or* to have been on and since the day of 186], entitled, and to eject all other persons therefrom, are hereby summoned to appear at a County Court to be holden at on the day of 186 , at the hour of in the forenoon, to defend the said property, or such part thereof as you may be advised.

And take notice that unless you appear judgment may be given, and you turned out of possession.

Dated the day of 186 .

Registrar of the Court.

To the Defendants.

£ s. d.

Costs of this Summons . . . .

At bottom of Summons.

Take Notice.—If you the defendants, or any of you, be only tenants of the property or some part thereof, you must, upon being served with this summons, or if this summons shall come to your knowledge, forthwith give notice thereof to your immediate landlord or his bailiff or receiver; and if you do not give such notice you will be liable, under section 209 of 15 & 16 Vict. c. 76, to forfeit to your landlord three years' rackrent of the premises demised to you or holden in your possession of him, in respect of which this summons has issued.

126.

NOTICE OF WITHDRAWAL OF ACTION AS TO THE WHOLE OR PART OF PROPERTY.

Take notice that I the above-named plaintiff will not proceed in this action [*or* in respect of that portion of the property hereinafter described, that is to say *here describe the said portion of property*].

Plaintiff.

127.

NOTICE IN EJECTMENT THAT A PERSON NOT ORIGINALLY MADE A DEFENDANT WILL APPEAR AND DEFEND.

Take notice that M. N. has filed the affidavit, a copy of which is hereunto annexed, and that by leave of the registrar he will appear at the trial as a defendant.

To the Plaintiffs.

128.

NOTICE IN EJECTMENT THAT A DEFENDANT WILL LIMIT HIS DEFENCE TO PART OF THE PROPERTY.

Take notice that the above-named defendant K. L. will at the trial of this action limit his defence to a part only of the property mentioned in the statement annexed to the summons; that is to say [*here describe the part to which the defence is limited with reasonable certainty*].

To the Registrar of the Court and to the Plaintiffs.

129.

JUDGMENT IN EJECTMENT FOR ALL THE PLAINTIFFS FOR THE WHOLE PROPERTY.

Upon the hearing of this cause at a Court holden this day it is adjudged that the plaintiffs were on the* day of 186 and still are entitled to the possession of the property mentioned in the statement annexed to the summons in this action; that is to say [*describe the property as set out in the statement*]; and it is ordered that the defendants do give the plaintiffs possession of the said above-mentioned property forthwith [*or* on the day of]; and it is adjudged that the plaintiffs do recover against the defendants the sum of £ for costs.

And it is ordered that the defendants do pay to the registrar of this Court the sum above mentioned on or before the day of 186 .

To the Defendants.

Take notice that if possession be not given and payment made as above ordered, a warrant may issue requiring the bailiff of the Court to give possession of the said property to the plaintiffs, and to levy the sum above mentioned, together with further costs.

* The day on which the summons issued, or the day stated in the summons on which the title of plaintiffs accrued.

130.

JUDGMENT IN EJECTMENT FOR ALL THE PLAINTIFFS FOR PART OF THE PROPERTY AGAINST ONE OF THE DEFENDANTS, AND FOR THE OTHER DEFENDANTS AS TO THE RESIDUE OF THE PROPERTY.

Upon the hearing of this cause, at a Court holden this day, it is adjudged that the plaintiffs were, on the day of 186 , and still are, entitled to the possession of part of the property mentioned in the statement annexed to the summons in this action; that is to say [*describe the part the plaintiffs are adjudged entitled to*], and for which part the defendant G. H. defended separately; but that the plaintiffs were not nor are entitled to the possession of the residue of the property described in the statement annexed to the summons, for which the defendants I. J. and K. L. defended; and it is ordered that the defendant G. H. do give the plaintiffs possession of the said part of the said property, for which the said G. H. defended separately, forthwith [*or* on the day of 186]; and it is adjudged that the plaintiffs do recover against the defendant G. H. the sum of £ for costs, and that the defendants I. J. and K. L. do recover against the plaintiffs the sum of £ for costs.

And it is ordered that the defendant G. H. do pay the said sum of £ , and the plaintiffs the said sum of £ to the registrar of this Court, on or before the day of 186 .

To the Defendant G. H. and to the Plaintiffs.

Take notice that unless possession be given and payment made as above ordered a warrant or warrants may issue, requiring the bailiff of the Court to give possession of the said property to the plaintiffs, and to levy the sums above mentioned from the parties ordered to pay the same respectively, together with further costs.

131.

JUDGMENT IN EJECTMENT FOR ONE OF THE PLAINTIFFS FOR ALL THE PROPERTY AGAINST ALL THE DEFENDANTS.

Upon the hearing of this cause, at a Court holden this day, it is adjudged that the plaintiff A. B. was on the day of 186 , and still is, entitled to the possession of the property mentioned in the statement annexed to the summons in this action; that is to say [*describe the property as set out in the statement annexed in the summons*]; and it is ordered that the defendants do give the said plaintiff A. B. possession of the said above-mentioned property forthwith [*or* on the day of], and it is adjudged that the said plaintiff A. B. do recover against the defendants the sum of £ for costs.

And it is ordered that the defendants do pay to the registrar of this Court the sum above mentioned on or before the day of 186 .

To the Defendants.

Take notice that unless possession be given and payment made as above ordered, a warrant may issue, requiring the bailiff of the Court to give possession of the said property to the plaintiff A. B., and to levy the sum above mentioned, together with further costs.

132.

JUDGMENT IN EJECTMENT FOR PLAINTIFF WHOSE TITLE HAS EXPIRED BEFORE TRIAL.

No. of Plaint.

In the County Court of holden at .
(*Seal.*)

Between A. B., Plaintiff,
and
C. D., Defendant.

Upon the hearing of this cause, at a Court holden this day, it is adjudged that the plaintiff was on the day of 186 , and thence until and at the time of the entry of the plaint and of the service of the summons in this action, entitled to the possession of the property mentioned in the statement annexed to the summons in this action; that is to say [*here describe the property as set out in the statement*], but his title to the same has since that time and before this day expired; and it is further adjudged that the plaintiff do recover against the defendant the sum of £ for costs.

And it is ordered that the defendant do pay the registrar of this Court the sum above mentioned on or before the day of 186 .

Given under the seal of the Court, this day of 186 .

By the Court.
Registrar of the Court.

To the Defendant.

133.

JUDGMENT IN EJECTMENT FOR DEFENDANT.

Upon hearing this cause, at a Court holden this day, it is adjudged that the plaintiff was not on the day of 186 , nor thence hitherto hath been nor is he now entitled to the possession of the property, or of any part of the property mentioned in the statement annexed to the summons in this action; that is to say [*here describe the property as set out in the statement*]; and it is further adjudged that judgment be entered for the defendant [*or* that judgment of nonsuit be entered], and that the defendant do recover against the plaintiff the sum of £ for costs.

And it is ordered that the plaintiff do pay the same to the registrar of this Court on or before the day of 186 .

To the Plaintiff.

134.

JUDGMENT IN EJECTMENT FOR DEFENDANT'S COSTS WHERE PLAINTIFF DOES NOT APPEAR.

Whereas the plaintiff has not appeared, either by himself, his attorney, or agent, at the Court holden this day, being the day appointed for the trial of this cause, and the defendant has appeared in person [*or* by his attorney or agent], it is therefore

adjudged that the cause be struck out, and that the defendant do recover from the plaintiff the sum of £ for costs.

And it is ordered that the plaintiff do pay the same to the registrar of this Court on or before the day of 186 .

To the Plaintiff.

135.

HEADING AND CONCLUSION FOR SPECIAL CASE IN EJECTMENT.

No. of Plaint.

In the County Court of holden at .

(*Seal.*)

Between A. B., Plaintiff,
and
C. D., Defendant.

Whereas an action of ejectment was commenced by the plaintiff against the defendant, and is still pending in this Court, for the recovery of [*here describe the property sought to be recovered as set out in the statement annexed to the summons*], and the parties have agreed upon the facts; now, by leave of the registrar, they state for the opinion of the Court the following

Case.

[*Here set out the facts, and any deeds or documents, or so much thereof as may be material, numbering each paragraph of the case as in an affidavit, and conclude thus:*]

If the Court shall be of opinion that the plaintiff is entitled to recover the whole or part of the property, then judgment shall be given accordingly for the plaintiff with costs, but if the Court shall be of a contrary opinion, then judgment shall be entered for the defendant, or judgment of nonsuit shall be given, with costs, as to the Court shall seem fit.

A. B., Plaintiff,
or
E. F., Plaintiff's Attorney.

C. D., Defendant,
or
G. H., Defendant's Attorney.

136.

WARRANT OF EXECUTION IN EJECTMENT FOR POSSESSION AND COSTS.

Whereas at a Court holden at on the day of 186 it was adjudged that the plaintiffs were on the day of 186 and still are entitled to the possession of the property mentioned in the statement annexed to the summons in this action; that is to say [*describe the property as set out in the statement*]; and it was ordered that the defendant should give the plaintiffs possession of the said above-mentioned property forthwith [*or* on the day of], and it was adjudged that the plaintiffs should recover against the de-

fendants the sum of £ for costs, and it was ordered that the defendant should pay the said sum to the registrar of this Court forthwith [*or* on the day of]:

And whereas the defendants have not obeyed the said order: These are therefore to authorize and require you to forthwith give possession of the said hereinbefore-mentioned property to the plaintiff: And these are therefore further to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this Court (excepting the wearing apparel and bedding of the defendant or his family, and the tools and implements of his trade, if any, to the value of five pounds), the said sum and the costs of this warrant and execution, and also to seize and take any money or bank-notes (whether of the Bank of England or any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the defendant, which may be there found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay the amount so levied to the registrar of this Court, and make return of what you have done under this warrant immediately upon the execution thereof.

To the High Bailiff of the
said Court.

137.

SPECIAL WARRANT OF EXECUTION IN EJECTMENT FOR POSSESSION AND COSTS WHERE ONE OF SEVERAL PLAINTIFFS HAS DIED AFTER JUDGMENT, AND BEFORE EXECUTION EXECUTED.

Whereas at a Court holden at on the day of 186 , it was adjudged that the plaintiffs were on the day of 186 and still are entitled to the possession of [*describe the property as in the statement annexed to the summons*], mentioned in the statement annexed to the summons in this action, and it was ordered that the defendants should give the plaintiffs possession of the same forthwith [or *as in the judgment*], and it was adjudged that the plaintiffs should recover against the defendants the sum of £ for costs, and it was ordered that the defendants should pay the said sum to the registrar of this Court forthwith [or *as in the judgment*]:

And whereas the defendants have not obeyed the said order:

And whereas C. D., one of the plaintiffs, has died since judgment was given and before execution executed:

These are therefore to authorize and require you to forthwith give possession of the said hereinbefore-mentioned premises to the surviving plaintiffs A. B. and E. F. on behalf of themselves and of the legal representatives of the deceased plaintiff C. D. And these are therefore further, etc. [*conclude as in* No. 124 *of the forms in the schedule*].

138.

JUDGMENT IN EJECTMENT FOR PLAINTIFF WHERE DEFENDANT IS JOINT TENANT, TENANT IN COMMON, OR COPARCENER WITH PLAINTIFF, AND AN ACTUAL OUSTER IS PROVED.

Upon the hearing of this cause at a Court holden this day it

is adjudged that the plaintiff and defendant were on the day of 186 and still are entitled to the joint possession of the property mentioned in the statement annexed to the summons in this action as joint tenants [*or* as tenants in common *or* as coparceners]; that is to say [*describe the property as set out in the statement*], and it having been proved to the satisfaction of the Court that the defendant did before the commencement of this action actually oust the plaintiff from the possession of the said property, and thence hitherto hath kept and still keeps the plaintiff ousted therefrom, it is adjudged and ordered that judgment be entered for the plaintiff, and that the defendant do give the plaintiff jointly with him the defendant possession of the said above-mentioned property forthwith [*or* on the day of], and that the plaintiff do recover against the defendant the sum of £ for costs.

And it is ordered that the defendant do pay to the registrar of this Court the sum above mentioned, on or before the day of 186 .

To the Defendant.

Take notice that if possession be not given and payment made as above ordered, a warrant may issue requiring the bailiff of the Court to give possession of the said property to the plaintiff, and to levy the sum above mentioned, with further costs.

139.

JUDGMENT IN EJECTMENT FOR DEFENDANT WHERE DEFENDANT IS JOINT TENANT, TENANT IN COMMON, OR COPARCENER WITH THE PLAINTIFF, AND NO ACTUAL OUSTER IS PROVED.

Upon the hearing of this cause at a Court holden this day it is adjudged that the plaintiff and the defendant were on the day of 186 and still are entitled as joint tenants [*or* as tenants in common *or* as coparceners] to the joint possession of; that is to say [*describe the property as set out in the statement*]; mentioned in the statement annexed to the summons in this action; and it not having been proved to the satisfaction of the Court that the defendant has actually ousted the plaintiff from the possession of the said property or of any part thereof, it is adjudged and ordered that judgment be entered for the defendant, and that the defendant do recover against the plaintiff the sum of £ for costs.

And it is ordered that the plaintiff do pay to the registrar of this Court the sum above mentioned on or before the day of 186 .

To the Plaintiff.

140.

ORDER IN EJECTMENT FOR THE SUBSTITUTION OF THE HEIR OR OTHER REPRESENTATIVE OF A SOLE PLAINTIFF WHO DIES BEFORE THE RETURN DAY FOR SUCH DECEASED PLAINTIFF, AND FOR THE CONTINUATION OF THE ACTION IN THE NAME OF THE HEIR OR OTHER REPRESENTATIVE.

Upon reading the affidavit of E. F., and upon hearing the attorneys of the said E. F. and of the defendant, and it appearing to the Court that the plaintiff A. B. died on the day

of now last past, and since the commencement of this action, and that the said E. F. is the heir-at-law of the said A. B., and as such heir entitled to whatever estate or interest the said A. B. had in the property sought to be recovered in this action, [*or* that the said E. F. is entitled as devisee under the will of the said A. B. to whatever estate or interest the said A. B. had in the property sought to be recovered in this action [*or as the case may be*],] it is ordered that the name of the said E. F. as heir-at-law [*or* as devisee under the will, *or as the case may be*] of A. B. deceased be substituted in the proceedings in this action for the name of the said A. B. deceased as plaintiff in this action, and that the said E. F. be at liberty to continue this action in his own name as plaintiff, and to proceed therein as if he had been originally the plaintiff therein, and that the said E. F. do pay to the registrar of this Court, on or before the day of 186 , the sum of £ for the costs occasioned to the defendant by this application, and that the trial of this action be forthwith proceeded with [*or* be adjourned to the day of 186].

To the Defendant.

N.B.—In explanation of this form it may be mentioned that after the amendment the title of the cause will stand thus :—

Between E. F. (the heir-at-law of A. B., the original Plaintiff, deceased) . Plaintiff,
and
C. D. . . . . Defendant.

Or,

Between E. F. (devisee under the will of A. B., the original Plaintiff, deceased), Plaintiff,
and
C. D. . . . . Defendant.

141.

ORDER IN EJECTMENT FOR THE SUBSTITUTION OF THE HEIR OR OTHER REPRESENTATIVE OF ONE OF SEVERAL PLAINTIFFS WHO DIES BEFORE THE RETURN DAY FOR SUCH DECEASED PLAINTIFF, AND FOR THE CONTINUATION OF THE ACTION IN THE NAMES OF THE SURVIVING PLAINTIFF AND OF THE HEIR OR OTHER REPRESENTATIVE OF THE DECEASED PLAINTIFF.

Upon reading the affidavit of K. L., and upon hearing the attorneys of the said K. L. and of the defendants, and it appearing to the Court that the plaintiff C. D. died on the day of now last past, and since the commencement of this action, and that the said K. L. is the heir-at-law [*or as the case may be*] of the said C. D., and as such heir [*or as the case may be*] is entitled to whatever estate or interest the said C. D. had in the property sought to be recovered in this action; it is ordered that the name of the said K. L. as heir-at-law [*or as the case may be*] of C. D. deceased be substituted in the proceedings in this action for the name of the said C. D. deceased as one of the plaintiffs, and that the action be continued and proceeded with in the names of A. B. and K. L. as plaintiffs as if the said A. B. and K. L. had been originally the plaintiffs therein, and that the said K. L. do pay to the registrar of this Court on or before the day of 186 the sum of £ for the costs oc-

casioned to the defendants by this application, and that the trial of this action be forthwith proceeded with [*or* be adjourned to the day of 186].

To the Defendants.

142.

JUDGMENT IN EJECTMENT FOR SUBSTITUTED PLAINTIFF.

No. of Plaint.

In the County Court of holden at

(*Seal.*)

Between E. F., heir-at-law of A. B. [*the original Plaintiff*] deceased . Plaintiff,

and

C. D. . . . . Defendant.

Or,

[Between E. F., devisee under the will of A. B., the original Plaintiff, deceased Plaintiff,

and

C. D. . . . . Defendant.]

Whereas the plaintiff A. B. died after the commencement of this action, and before the return day of the summons therein, and by an order of the Court made this day [*or* on the day of last] it was ordered, amongst other things, that the name of the said E. F., as heir-at-law of A. B. deceased, should be substituted in the proceedings in this action for the name of the said A. B. deceased as plaintiff, and that the action should be continued in the name of the said E. F. as plaintiff as aforesaid:

Now, upon the hearing thereof at a Court holden this day it is adjudged, that the said A. B. on the day of 186 , and thence until the day of his death, was entitled to the possession of the property mentioned in the statement annexed to the summons in this action; that is to say [*describe the property as set out in the statement*]; and that the said Plaintiff E. F. is the heir-at-law of the said A. B., and as such heir became on the death of the said A. B. and still is entitled to the possession of the said above-mentioned property; and it is ordered that the defendant do give the Plaintiff E. F. possession of the said above-mentioned property forthwith [*or* on the day of 186], and it is adjudged that the plaintiff E. F. do recover against the defendant the sum of £ for costs:

And it is ordered that the defendant do pay to the registrar of this Court the sum above mentioned on or before the day of 186 .

Given under the seal of the Court this day of 186 .

By the Court,

Registrar of the Court.

To the Defendant.

Take notice that if possession be not given and payment made as above ordered, a warrant may issue requiring the bailiff of the Court to give possession of the said property to the plaintiff, and to levy the sum above-mentioned, together with further costs.

[N.B.—*If* E. F. *be entitled as devisee under the will of* A. B., *the original plaintiff, or if* A. B. *be one of several joint plaintiffs, the above form must be altered accordingly.*]

143.

JUDGMENT IN EJECTMENT FOR SURVIVING AND SUBSTITUTED PLAINTIFFS.

No. of Plaint.

In the County Court of holden at

(*Seal.*)

Between A. B. and K. L., the heir-at-law of C. D. (one of the original Plaintiffs), deceased . } Plaintiff,

and

E. F. and G. H. . . . . Defendants.

Whereas one of the plaintiffs C. D. died after the commencement of this action, and before the return day of the summons therein, and by an order of this Court made this day [*or* on the day of last] it was ordered (amongst other things) that the name of the said "K. L. as heir-at-law of C. D. deceased" should be substituted in the proceedings in this action for the name of the said C. D. deceased, together with the name of the said A. B. as plaintiffs, and that the action should be continued in the names of the said A. B. and K. L. as plaintiffs as aforesaid.

Now upon the hearing thereof at a Court this day holden it is adjudged that the said A. B. and C. D. deceased were on the day of 18 , and thence until the day of the death of the said C. D., entitled to the possession of [*describe the property as in the statement annexed to the summons*], mentioned in the statement annexed to the summons in this action; and that the said plaintiff K. L. is the heir-at-law of the said C. D. deceased; and that on the death of the said C. D. the said A. B. and K. L. became and still are entitled to the possession of the property in the said statement mentioned, and it is ordered that the defendants do give the plaintiffs A. B. and K. L. possession of the property above mentioned and described forthwith [*or* on the day of 18]; and it is adjudged that the plaintiffs A. B. and K. L. do recover against the defendants the sum of £ for costs.

And it is ordered that the defendants do pay to the registrar of this Court the sum above mentioned on or before the day of 18 .

Given under the seal of the Court this day of 186 .

By the Court,

Registrar of the Court.

To the Defendants.

[*If* K. L. *be entitled as devisee under the will of* C. D., *one of the original plaintiffs, this form must be altered accordingly.*]

144.

ORDER IN EJECTMENT, GIVING LEAVE TO A PARTY CLAIMING THE PROPERTY ON THE DEATH OF DEFENDANT, WHO DIES BEFORE THE RETURN DAY, TO APPEAR AND DEFEND IN THE PLACE OF SUCH DECEASED DEFENDANT.

Upon reading the affidavit of E. F., and upon hearing the attorneys of the said E. F. and of the plaintiff, and it appearing to the Court that the defendant has died since the commencement of the action, and that upon the death of the defendant

the said E. F. became entitled to whatever estate or interest the defendant C. D. had in the property sought to be recovered in this action; it is ordered that the said E. F. be at liberty to appear and defend the said property above mentioned and described in the place of the said C. D. deceased, and that the name of the said E. F. be substituted for that of the said C. D. deceased, as defendant in the proceedings in this action, and that this action be continued as if the said E. F. had been originally made defendant therein; and that the said E. F. do pay to the registrar of this Court on or before the day of 186 the sum of £ for the costs occasioned to plaintiff by this application, and that the trial of this action be forthwith proceeded with [*or* be adjourned to the day of 186 .]

To the Plaintiff.

[N.B.—In explanation of this form, it may be mentioned that after the amendment the title of the cause will stand thus:—

Between A. B., Plaintiff,
and
E. F. (substituted for C. D. deceased), Defendant,

and all the subsequent proceedings will be against E. F. as if he had been originally defendant.]

145.

SUMMONS IN EJECTMENT IN THE NATURE OF A SCIRE FACIAS FOR COSTS AGAINST THE REPRESENTATIVES OF A DECEASED DEFENDANT.

No. of Plaint.

In the County Court of holden at

(*Seal.*)

Between A. B., Plaintiff
[*address, description*],
and
C. D., Defendant
[*address, description*].

Whereas the plaintiff at a Court holden at on the day of 186 obtained a judgment against C. D., of , for the recovery of the possession of [*here describe the property as in the judgment*], and for the sum of £ for costs, which judgment remains unsatisfied so far as relates to the said costs; and whereas the said C. D. has since died and you are his executor [*or state other representative character*], you are hereby summoned to appear at a Court to be holden at on the day of 186 at o'clock in the noon, to show cause why judgment should not be entered up against you at the suit of the plaintiff on the judgment so obtained for the said sum of £ for costs, and why execution should not issue thereon for the same.

To the Defendant.

	£	*s.*	*d.*
Due on judgment for costs . . .	:	:	

[*N.B.—Judgments can easily be framed from the ordinary Form of Judgment on Scire facias Summons.*]

146.

JUDGMENT IN EJECTMENT FOR PLAINTIFF WHO HAS WITHDRAWN THE ACTION AS TO PART OF THE PROPERTY.

Whereas the plaintiff has withdrawn this action as to part of the property mentioned in the statement annexed to the summons in this action; that is to say [*describe the part of the property as set out in plaintiff's notice*], and the action has proceeded for the recovery of the remainder of the said property; now upon the hearing thereof this day it is adjudged that the plaintiff was on the day of 186 and still is entitled to the possession of the remainder of the property mentioned in the statement annexed to the summons in this action; that is to say [*describe the remainder of the property*]; and it is ordered that the defendant do give the plaintiff possession of the said lastly above-mentioned property forthwith [*or* on the day of]; and it is adjudged that the plaintiff do recover against the defendant the sum of £ for costs:

And it is ordered that the defendant do pay to the registrar of this Court the sum above mentioned on or before the day of 186 .

To the Defendant.

[*N.B.—If the judgment be that plaintiff recover part only of the remainder of the property, or be for the defendant, this form must be altered accordingly.*]

147.

CONFESSION IN EJECTMENT BY DEFENDANT OF PLAINTIFF'S TITLE TO THE PROPERTY.

No. of Plaint.

In the County Court of holden at
Between A. B., Plaintiff,
and
C. D., Defendant.

I, the above-named defendant, hereby confess and admit the plaintiff's title to the property mentioned in the statement annexed to the summons in this action, and sought to be recovered therein, and that the plaintiff is entitled to the immediate possession thereof.

Dated this day of 186 .

Defendant.

Signed by the defendant in the presence of
To the Registrar of the Court.

148.

CONFESSION IN EJECTMENT BY DEFENDANT DEFENDING SEPARATELY FOR PART OF THE PROPERTY OF PLAINTIFF'S TITLE TO SUCH PART.

No. of Plaint.

In the County Court of holden at
Between A. B., Plaintiff,
and
C. D. and E. F., Defendants.

I, C. D., one of the above-named defendants, defending sepa-

rately for [*here describe the part for which C. D. defends*], being part of the property mentioned in the statement annexed to the summons in this action, and for which no other person defends, do hereby confess and admit the plaintiff's title to the above-mentioned part of the said property, and that he is entitled to the immediate possession thereof.

Dated this day of 186

C. D., one of defendants.

Signed by C. D., one of the defendants,
in presence of

To the Registrar of the Court.

149.

JUDGMENT IN EJECTMENT FOR PLAINTIFF, WHERE A DEFENDANT, DEFENDING SEPARATELY FOR PART OF THE PROPERTY, ADMITS PLAINTIFF'S TITLE TO SUCH PART, AND THE ACTION PROCEEDS FOR THE RECOVERY OF THE REMAINDER OF THE PROPERTY.

Whereas C. D., one of the defendants defending separately for [*here describe the part for which C. D. defends*], being part of the property mentioned in the statement annexed to the summons in this action, and for which no other person defends, hath confessed and admitted the plaintiff's title to the said part of the said property, and that the plaintiff is entitled to the possession thereof; and whereas the action has proceeded for the recovery of the remainder of the said property; now, upon the hearing thereof at a court holden this day, it is adjudged that the plaintiff was on the day of 186 and still is entitled to the possession of the remainder of the property mentioned in the statement annexed to the summons in this action; and it is ordered that the defendant C. D. do give the plaintiff possession of the said [*describe the part defended by C. D.*] forthwith [*or* on the day of 186], and that the defendant E. F. do give the plaintiff possession of the said [*the remainder of the property*] forthwith [*or* on the day of 186]; and it is adjudged that the plaintiff do recover against the defendant C. D. the sum of £ for costs, and against the defendant E. F. the sum of £ for costs.

And it is ordered that the defendants do respectively pay the said sums above mentioned to the registrar of this Court on or before the day of 186.

To the Defendants.

Take notice, that unless possession be given and payment made as above ordered a warrant may issue requiring the bailiff of the Court to give possession of the said property to the plaintiff, and to levy the sums above mentioned, together with further costs.

N.B.—If the judgment be that plaintiff recover part only of the remainder of the property, or be for the defendant, the above form must be altered accordingly.

150.

NOTICE IN EJECTMENT BY MORTGAGEE AGAINST MORTGAGOR THAT DEFENDANT HAS PAID INTO COURT A SUM OF MONEY FOR PRINCIPAL, INTEREST, AND COSTS.

Take notice, that the defendant has paid into Court the sum of £ as being all that is due for principal and interest upon the mortgage upon which this action is brought, and for costs; and further take notice, that if you are willing to accept the said sum so paid into Court you need not appear on the return day of the summons; but if you do not agree to accept the said sum so paid in as aforesaid, you should appear at the Court on that day, as the Court will then proceed to determine whether the said sum of £ so paid into Court as aforesaid is sufficient to satisfy all such principal, interest, and costs and fees as aforesaid, and will in either case make such order in the matter as to the Court shall seem fit.

Dated this day of 186 .

Registrar of the Court.

To the Plaintiff.

151.

ORDER IN EJECTMENT BY MORTGAGEE AGAINST MORTGAGOR (ALL MONEY DUE FOR PRINCIPAL, INTEREST, AND COSTS HAVING BEEN PAID INTO COURT) UPON PLAINTIFF TO RECONVEY TO THE DEFENDANT THE MORTGAGED PROPERTY.

Whereas this action is brought to recover possession of certain property mortgaged by the defendant to the plaintiff, and the defendant has paid into Court the sum of £ for principal, interest, and costs due upon or in respect of the said mortgage; now upon the hearing thereof at the Court this day holden, the plaintiff not appearing [*or* the plaintiff agreeing to accept the said sum of £ for such principal, interest, and costs, as aforesaid, *or* the plaintiff alleging that the said sum of £ is not sufficient to satisfy such principal, interest, and costs as aforesaid, it is adjudged that the said sum is sufficient to satisfy such principal, interest, and costs as aforesaid, and it is ordered that within days from this day the plaintiff shall, at the costs and charges of the defendant, reconvey to the defendant the mortgaged property for the recovery of which this action is brought, and shall deliver up to the defendant all title deeds and writings relating to the said property.

To the Plaintiff and to the Defendant.

152.

ORDER IN EJECTMENT BY MORTGAGEE AGAINST MORTGAGOR (A CERTAIN SUM HAVING BEEN PAID INTO COURT FOR PRINCIPAL, INTEREST, AND COSTS), THAT DEFENDANT SHALL PAY A FURTHER SUM INTO COURT, AND THAT UPON SUCH PAYMENT BEING MADE THE PLAINTIFF SHALL RECONVEY THE MORTGAGED PROPERTY TO THE DEFENDANT.

Whereas this action is brought to recover possession of certain property mortgaged by the Defendant to the Plaintiff, and

the defendant has paid into court the sum of £ for principal, interest, and costs due upon or in respect of the said mortgage; now, upon the hearing thereof, at a court this day holden, the plaintiff refusing to accept the said sum so paid into court as aforesaid, it is adjudged that the said sum of £ is not sufficient to satisfy the principal, interest, and costs due upon or in respect of the said mortgage, and that the further sum of £ is due from the defendant to the plaintiff for the same; and it is ordered that the defendant shall on or before the day of 186 pay to the registrar of this Court the said last-mentioned sum, together with £ for the plaintiff's costs in this action, and that upon the said sums of £ and £ amounting together to the sum of £ , being paid into court on or before the said day of 186 , the plaintiff shall, within days from the said last-mentioned day, at the costs and charges of the defendant, reconvey to the defendant the mortgaged property for the recovery of which this action is brought, and deliver up to him all title deeds and writings relating thereto; and it is further ordered, that if the defendant shall not, before or on the said day of 186 , pay the said last-mentioned sum, then execution shall forthwith issue on the application of the plaintiff for the recovery of the possession of the property described in the summons in this action, and for the sum of £ [*the costs of this action*], together with the costs of the execution; and the registrar shall return the money paid into court to the defendant.

To the Plaintiff and to the Defendant.

153.

PARTICULARS OR STATEMENT OF THE CAUSE OF ACTION UNDER SECTION 12 OF 30 & 31 VICT. c. 141.

No. of Plaint,

In the County Court of holden at

(*Seal.*)

Between A. B., Plaintiff,
and
C. D., Defendant.

This action is brought,—

Interruption of right of way.

A. For that the plaintiff was possessed of a cottage, and by reason thereof was entitled to a right of way from and to the said cottage, over and through a certain inclosed yard of the defendant, to a certain spring of water, for the purpose of getting water from the said spring, and that the defendant hath prevented the plaintiff from using the said way and having thereby access to the said spring, and still hinders and prevents him therefrom; and neither the annual value nor the yearly rent of the lands, tenements, or hereditaments in respect of which or on, through, or over which such easement is claimed exceeds the sum of £20; and the plaintiff claims £20 damages.

Interruption of drainage.

B. For that the plaintiff was possessed of a cottage and premises, and by reason thereof was entitled to have all the sewage and waste water arising on and from the said cottage and premises flow along and through a drain through and under the surface of a garden in the occupation of defendant into a cesspool there, and the defendant, by stopping up the said drain,

hath prevented and still prevents such sewage and waste water from flowing through and along the said drain into the said cesspool: and neither, &c. [*as in the last Form*], and the plaintiff claims 5s. damages.

Obstruction of light and air.

C. For that the plaintiff was possessed of a house, in which there were divers windows, and by reason thereof was entitled to the free access of air and light into the said house through the said windows, and the defendant, by building a wall close to and in front of the said windows, hath darkened the plaintiff's house, and prevented and still prevents the access of light and air into the plaintiff's house as plaintiff before enjoyed the same; and neither the annual value nor yearly rent of either plaintiff's house, or of the land on which the defendant has built the said wall, exceeds the sum of £20; and the plaintiff claims 40s. damages.

[*The above forms are given merely as examples, and the statement in all cases must be in accordance with the right claimed, and be as concise as possible.*]

154.

19 & 20 Vict. c. 108, ss. 63, 64.

NOTICE TO DISTRAINER OF GOODS [OR CATTLE] INTENDED TO BE REPLEVIED.

For Notice of Sureties and Affidavit of Justification, see forms 15 *&* 16.

In the County Court of holden at

Take notice, that A. B. of, etc., whose goods [*or* cattle] you have distrained, intends to replevy the same, and has proposed as his sureties for the due prosecution of an action of replevin against you in the [*here mention the court in which the action is to be brought*], E. F. of, etc., and G. H. of, etc., and that if you have any valid objection to make to the proposed sureties, or either of them, you must attend at [*here insert place of office of registrar*] on the day of 18 at the hour of , when the bond will be submitted to me for approval.

J. K.,
Registrar of the Court.

155.

BOND IN REPLEVIN UNDER SECT. 65 OF 19 & 20 VICT. c. 108.

Know all men by these presents, that we A. B. of, etc., C. D., of, &., and E. F. of, etc., are held and firmly bound unto G. H. (a), of, etc., in £ to be paid to the said G. H. or his certain attorney, executors, administrators, or assigns, for which payment to be made we bind ourselves and each and every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

(*a*) The distrainer.

Sealed with our seals, and dated this day of one thousand eight hundred and .

I approve of this bond.
I. K.,
Registrar.
(L. S.)

Whereas the above-named C. D. and E. F., at the request of the said A. B., have agreed to enter into the above written obligation, and his security has been approved of by the registrar of the county court of holden at as appears by his allowance in the margin hereof.

This bond does not require a stamp. See 5 G. 4, c. 41.

Now the condition of this obligation is such, that if the above bounden A. B. do and shall within one week from the date of the said obligation commence an action of replevin against the above-named G. H. in her Majesty's Court of at Westminster for taking and unjustly detaining of certain goods and chattels of the said to wit [*here insert the description of the goods and chattels*], and prosecute such action with effect and without delay, and unless judgment be obtained thereon by default, do and shall prove before the said Court of that he the said had good ground for believing that the title to the hereditament in respect of which the distress was made was in question [*or*, that the title to a toll was in question], [*or*, that the title to a market was in question], [*or*, that the title to a fair was in question], [*or*, that the title to a franchise was in question], [*or*, that the alleged rent or damage in respect of which the distress was made exceeded twenty pounds], and do and shall also make return of the said goods and chattels, if return thereof shall be awarded, then this obligation shall be void and of no effect, otherwise shall be and remain in full force.

A. B. (L. S.)
C. D. (L. S.)
E. F. (L. S.)

Signed, sealed, and delivered by the above-bounden in the presence of

Note.—*If a deposit of money be made, the memorandum thereof should follow the conditions of the bond, and will not require a stamp.* 19 & 20 Vict. c. 108, s. 71.

156.

BOND IN REPLEVIN UNDER SECT. 66 OF 19 & 20 VICT. C. 108.

Know all men by these presents, that we, A. B. of, etc., and C. D. of, etc., and E. F. of, etc., are held and firmly bound unto G. H. (*a*) of, etc., in £ to be paid to the said G. H., or his certain attorney, executors, administrators, or assigns, for which payment to be made we bind ourselves, and each and every us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by by these presents.

(*a*) The distrainer.

Sealed with our seals, and dated this day of one thousand eight hundred and

Whereas the above-named C. D. and E. F., at the request of the said A. B., have agreed to enter into the above-written obligation, and this security has been approved of by the registrar of the County Court of holden at as appears by his allowance in the margin hereof.

I approve of this bond.
I. K.,
Registrar.
(L. S.)
This bond does not require a stamp. See 5 G. 4, c. 41.

Now the condition of this obligation is such, that if the above-bounden A. B. do and shall within one month from the date of the said obligation commence an action of replevin against the above-named G. H. in the County Court of holden at for taking and unjustly detaining of certain goods and chattels of the said to wit [*here insert the description of the goods and chattels*], and prosecute such action with effect and without delay, and do and shall also make return of the said

goods and chattels, if return thereof shall be awarded, then this obligation shall be void and of no effect, otherwise shall be and remain in full force.

A. B. (L. S.)
C. D. (L. S.)
E. F. (L. S.)

Signed, sealed, and delivered by the above-bounden in the presence of

19 & 20 Vict. c. 108, s. 71. Note.—*If a deposit of money be made, the memorandum thereof should follow the terms of the conditions of the bond, and will not require a stamp.*

157.

19 & 20 Vict. c. 108, s. 63. WARRANT TO HIGH BAILIFF TO REPLEVY.

In the County Court of
holden at

Whereas hath given security as well to commence his action of replevin against for the taking and unjustly detaining of certain goods and chattels [*or* cattle] of the said that is to say:

and prosecute such action with effect and without delay, as also to return the said goods and chattels if return thereof shall be adjudged by law: Now, as registrar of the said County Court, and by virtue of the provisions of the 19 & 20 Vict. c. 108, I hereby authorize and direct you without delay to replevy and deliver the said goods and chattels [*or* cattle] to the said and forthwith to return to me this warrant and what you shall have done under the same.

Dated this day of 186 .

Registrar of the Court.

To the High Bailiff of the Court.

In obedience to this warrant, I have replevied and caused to be delivered to the within named the within-mentioned goods and chattels [*or* cattle].

Dated this day of 186 .

High Bailiff.

(FOR JUDGMENT FOR PLAINTIFF IN REPLEVIN. *See* Form 57.)

158.

JUDGMENT FOR DEFENDANT IN REPLEVIN FOR RENT.

Upon hearing this cause at a Court holden this day, it is adjudged that the Plaintiff do return to the Defendant the goods and chattels, [*or* cattle, *stating the particulars thereof,*] and pay to the Registrar of the Court, forthwith [*or* on the day of], the sum of £ for costs of suit [*or*, it is adjudged that the amount due for rent in arrear from the plaintiff to the defendant is £ and that the goods and chattels [*or* cattle]

were of the value of £ and that the plaintiff do forthwith [*or* on the day of] pay to the registrar of the Court, at his office, the said sum of £ and also the sum of £ for costs of suit].

159.

JUDGMENT FOR DEFENDANT IN REPLEVIN OF CATTLE DAMAGE FEASANT.

Upon hearing this cause at a Court holden this day, it is adjudged that the plaintiff do return to the defendant the cattle [*here specify the cattle*], *or* do pay to the registrar of this Court, forthwith [*or* on the day of 18], the sum of £ , which is now adjudged to be the amount of damage sustained by the defendant.

It is also adjudged that the plaintiff do pay to the registrar of the Court, on the day and year aforesaid, the sum of £ for costs.

160.

JUDGMENT IN DETINUE.

Upon hearing this cause at a Court holden this day, it is adjudged that the plaintiff do recover against the defendant the sum of £ the same being now this day assessed by this Court to be the value of the following chattels of the plaintiff wrongfully detained by the defendant; that is to say [*here enumerate the chattels which the Court decides to have been detained*] and the further sum of £ for damages for the detention of the said chattels, and the sum of £ for costs.

And it is ordered, that the defendant do pay the said several sums to the registrar of the Court on the day of 186 .

* And it is further ordered, that if the defendant shall on or before the said last-mentioned day pay to the registrar the said sums respectively above ordered to be paid for damages and costs, and also return to the plaintiff the said chattels, and if the plaintiff shall then accept the same, then satisfaction of this judgment shall be entered up by the registrar on the production to him of a receipt for the said chattels signed by the plaintiff or his attorney or agent into Court.

Acknowledgment of payment into Court.

£	s.	d.

161.

WARRANT OF EXECUTION IN DETINUE AGAINST GOODS OF DEFENDANT.

Whereas at a Court holden at on the day of 186 , the plaintiff obtained a judgment against the defendant for the sum of £ , the same being assessed by this Court

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* This paragraph is not to be added unless it be part of the order of the judge.

to be the value of certain chattels of the plaintiff wrongfully detained by the defendant, and for the further payment of £ , for damages for the detention of the said chattels, and of £ for costs; and thereupon it was ordered by the Court, that the defendant should pay the same to the registrar of this Court on the day of [*or* by instalments of for every days, the first instalment to be paid on the day of 186]:

* And it was further ordered, that if the defendant should on or before the said last-mentioned day pay to the registrar the said sums respectively above ordered to be paid for damages and costs, and also return to the plaintiff the said chattels, and if the plaintiff should then accept the same, then satisfaction of the said judgment should be entered up by the registrar on the production to him of a receipt for the said chattels signed by the plaintiff or his attorney: *

And whereas † the defendant did not on the said day of 186 , return the said chattels to the plaintiff, and † default has "also" been made in payment according to the said orders:

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant wheresoever they may be found within the district of this Court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, including the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant, which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this Court, and to make return of what you have done under this warrant immediately upon the execution thereof.

[N.B.—*If the judgment do not contain the words between asterisks, omit those words in the warrant, and also the words between the marks* (†) *and* (†) *and the word* "*also.*"]

	£	*s.*	*d.*
Value of goods detained			
Damages for their detention			
Costs			
Paid into Court			
Remaining due			
Poundage for issuing this warrant . .			
Total amount to be levied . .			

Notice.—The goods and chattels are not to be sold until after the end of five days next following the day on which they

were seized, unless they be of a perishable nature, or at the request of the defendant.

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 186 . 19 & 20 Vict. c. 108, s. 46.

162.

SUMMONS UNDER THE FRIENDLY SOCIETIES AND OTHER ACTS.

You are hereby summoned to appear at a Court to be holden at on the day of 186 , at the hour of in the noon, to answer the plaintiff in the matter the particulars of which are hereunto annexed.

Dated the day of 186 .

Registrar of the Court.

To the Defendant.

Summonses for witnesses and for the production of documents will be issued upon application at the office of the registrar.

163.

ORDER UNDER THE FRIENDLY SOCIETIES AND OTHER ACTS.

Upon hearing this cause at a Court this day holden it is ordered that the defendant do [*here insert the terms of the order made by the Court*].

And it is further ordered, that if the defendant do not obey the terms of the said order, he shall pay to the registrar of this Court, on or before the day of the sum of by way of penalty and the sum of £ for costs.

164.

ORDER FOR WARRANT OF EXECUTION TO ISSUE UNDER THE FRIENDLY SOCIETIES AND OTHER ACTS.

Whereas at a Court holden at on the day of 186 , it was ordered by the said Court that [*here insert the terms of the order of the Court*]:

And it was then further ordered, that if the defendant should not obey the terms of such order, that he should pay to the registrar of the Court, on or before the day of the sum of pounds by way of penalty.

And whereas it appears to the Court that the defendant has not obeyed either of the said orders, although demand in that behalf was duly made upon him:

It is therefore ordered that a warrant of execution issue for the said sum, being the amount of such penalty and the cost thereof.

165.

WARRANT OF EXECUTION AGAINST THE GOODS UNDER THE FRIENDLY SOCIETIES AND OTHER ACTS.

Whereas at a Court holden at on the day of 186 , it was ordered by the said Court that [*here insert the terms of the order of the Court*]:

And it was then further ordered, that if the defendant should not obey the terms of such order, that he should pay to the registrar of the Court, on or before the day of 186 , the sum of £ by way of penalty, and costs:

And whereas the defendant has not obeyed either of the said orders:

These are therefore to require and order you forthwith to make and levy, by distress and sale of the goods and chattels of the defendant, wheresoever they may be found within the district of this Court (excepting the wearing apparel and bedding of the defendant or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount of such penalty and costs, including the costs of this execution, and also to seize and take any money, bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of the Court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court, this day of 186 .

By the Court,
Registrar of the Court.

To the High Bailiff of the said Court, and others the bailiffs thereof.

	£	s.	d.
Amount ordered to be paid			
Costs			
Poundage for issuing this warrant . . .			
Total amount to be levied . . .			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said defendant.

19 & 20 Vict. c. 108, s. 46. Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 186 .

166.

9 & 10 Vict. c. 95, s. 113. WARRANT OF COMMITMENT FOR CONTEMPT.

To the High Bailiff and others the bailiffs of the said Court, and all peace officers within the jurisdiction of the said Court, and to the governor or keeper of the [*prison used by the Court*].

Whereas at a Court holden on this day, A. B. wilfully insulted the judge during his sitting in Court [*or* C. D., the registrar, high bailiff, bailiff, or officer (*as the case may be*) of the said

Court during his attendance in Court, *or* wilfully interrupted the proceedings of the said Court, *or* wilfully misbehaved in the said Court]:

These are therefore to require you, the said high bailiff, bailiffs, and others, to take the said A. B., and to deliver him to the governor [*or* keeper] of the above-named prison, and you, the said governor [*or* keeper, etc.] to receive the said A. B., and him safely to keep in the said prison for days from the arrest under this warrant, or until he shall be sooner discharged by due course of law.

Given under the seal of the Court, this day of 186 .

Judge of the Court.

167.

HIGH BAILIFF'S WARRANT TO REGISTRAR OF FOREIGN COURT. 9 & 10 Vict. c. 95, s. 104.

Whereas the warrant of execution [*or* commitment] hereto annexed has been issued out of this Court against the goods and chattels of

And whereas the goods and chattels of are out of the ordinary jurisdiction of this Court, and are [*or* is] believed to be within the jurisdiction of the County Court of holden at of which you are the registrar:

These are therefore to require you to cause the said warrant to be executed within the ordinary jurisdiction of the said last-mentioned County Court.

Dated this day of 186 .

High Bailiff of the County Court of holden at .

To the Registrar of the County Court of holden at .

168.

ORDER UNDER 19 & 20 VICT. C. 97, S. 2.

Upon hearing this cause (the same being for breach of contract to deliver specific goods for a price in money), at a Court holden this day, it being adjudged that the plaintiff is entitled to recover, it is upon the application of the plaintiff, found and adjudged that the goods in respect of the non-delivery of which the plaintiff is entitled to recover, and which remain undelivered, are as follows; (that is to say) [*here enumerate the goods undelivered*]; and that the plaintiff would have been liable to pay the sum of £ [*here insert the sum to be paid by plaintiff for the delivery*] for the delivery thereof; and that the plaintiff will have sustained damages to the amount of £ [*here insert the sum assessed for damages if the goods be delivered*] if the said goods shall be delivered under execution as hereinafter mentioned, and to the amount of £ [*here insert the sum assessed for damages in the event of the non-delivery of the goods*] if the said goods shall not be so delivered: And thereupon judgment being now given for the plaintiff, it is, upon the application of the plaintiff, ordered that the said goods be delivered by defen-

dant to the plaintiff, on the payment by him of the said sum of £ [*here insert the sum to be paid by plaintiff for the delivery*] on or before the day of now next ensuing, and that in default thereof execution do issue for the delivery to the plaintiff, on payment by the plaintiff of the said sum of £ [*here insert the sum to be paid by plaintiff for the delivery*] of the said goods; and that the defendant shall not have the option of retaining the same upon payment of the damages lastly assessed in the event of the non-delivery of the goods; and that the plaintiff do recover against the defendant the said sum of £ [*here insert the sum assessed for damages if the goods be delivered*] for damages, and £ for costs.

And it is further ordered, that if the said goods or any part thereof cannot be found within the district of this Court, the bailiff of this Court shall distrain the defendant by all his lands and chattels within the district of this Court till the defendant deliver the said goods, or, at the option of the plaintiff, the said bailiff shall cause to be made of the defendant's goods the said sum secondly above assessed for damages, or a due proportion thereof.

169.

DISTRINGAS AND WARRANT OF EXECUTION AGAINST DEFENDANT'S GOODS FOR THE AMOUNT OF DAMAGES FOR NON-DELIVERY OF THE GOODS (SUPPOSING THE GOODS DELIVERED UNDER THE ORDER AND DISTRINGAS), AND COSTS, UNDER 19 & 20 VICT. C. 97, S. 2.

Whereas at a Court holden at on the day of 186 , the plaintiff obtained a judgment against the defendant for the delivery to the plaintiff upon payment by the plaintiff of the sum of £ [*here insert the sum to be paid by plaintiff for the delivery*] of the following goods; (that is to say) [*here enumerate the goods enumerated in the judgment*], and by the said judgment it was found and adjudged that the plaintiff will have sustained damages to the amount of £ [*here insert the sum assessed for damages if the goods be delivered*] if the said goods shall be delivered to the plaintiff under this warrant, and to the amount of £ [*here insert the sum assessed for damages in the event of the non-delivery of the goods*] if the said goods shall not be so delivered, and judgment being then given for the plaintiff, it was thereupon ordered that execution do issue for the delivery to the plaintiff, on payment by the plaintiff of the said sum of £ [*here insert the sum to be paid by plaintiff for the delivery*] of the said goods, and that the defendant should not have the option of retaining the said goods upon payment of the said sum of £ [*here insert the sum assessed for damages in the event of the non-delivery of the goods*], and that the plaintiff do recover against the defendant the said sum of £ [*here insert the sum assessed for damages if the goods be delivered*] for damages, and £ for costs.

And it was further ordered, that if the said goods or any part thereof should not be found within the district of this Court, the bailiff of this Court should distrain the defendant by all his lands and chattels within the district of this Court, till the defendant deliver the said goods, or, at the option of the plain-

tiff, the said bailiff should cause to be made of the defendant's goods the said sum of [*here insert the sum found for damages if the goods be not delivered*] or a due proportion thereof.

And whereas the said goods have not been delivered according to the said order, and the said sum of £ so payable by the plaintiff as aforesaid has been paid to the registrar of this Court, and the plaintiff has not expressed his option to have the said sum of £ [*here insert the sum found for damages if the goods be not delivered*] or a due proportion thereof made of the goods of the defendant:

These are therefore to require and order you forthwith to seize the said goods so not delivered as aforesaid, wheresoever they may be found within the district of this Court, and to deliver the same to the plaintiff, and pay over to the defendant upon seizure of the said goods the said sum of £ [*here insert the sum to be paid by the plaintiff for the delivery*] which is delivered to you together with this warrant.

And if the same cannot be found by you within such district, you are required and ordered to distrain all the lands and chattels of the defendant, wheresoever they may be found, within the district of this Court, and them hold until the defendant shall deliver the said goods to you; and further to make and levy, by distress and sale of the goods and chattels of the defendant, wheresoever they may be found, within the district of this Court (excepting the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, including the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this Court, and make return of what you have done under this warrant immediately upon the execution thereof

Given under the seal of the Court, this day of 186 .

By the Court,
Registrar of the Court.

To the High Bailiff of the said Court, and others the bailiffs thereof.

	£	*s.*	*d.*
Amount found for damages if [the goods be delivered			
Sum adjudged for costs			
Poundage for issuing this warrant . .			
Total amount to be levied . . .			

NOTICE.—The goods and chattels seized for damages and costs are not to be sold until after the end of five days next fol-

lowing the day on which they were seized, unless they be of a perishable nature, or at the request of the defendant. Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 186 .

19 & 20 Vict. c. 108, s. 46.

[N.B.—*When a plaintiff sues out this warrant, he must pay to the registrar the amount found by the judgment to be payable by plaintiff for the delivery of the goods, and the registrar must hand over such amount to the bailiff with this warrant, for the bailiff to pay to the defendant, if either the defendant delivers the goods to the bailiff or the bailiff obtains possession of them under this warrant.*]

170.

WARRANT OF EXECUTION AGAINST DEFENDANT'S GOODS UNDER 19 & 20 VICT. C. 97, S. 2, WHERE PLAINTIFF EXERCISES THE OPTION OF HAVING THE DAMAGES ASSESSED FOR THE NON-DELIVERY OF THE GOODS (WHERE THE GOODS ARE NOT DELIVERED PURSUANT TO THE ORDER) LEVIED BY DISTRESS AND SALE OF DEFENDANT'S GOODS.

Whereas at a Court holden at on the day of 186 the plaintiff obtained a judgment against the defendant for the delivery to the plaintiff, upon payment by the plaintiff of the sum of £ [*here insert the sum to be paid by plaintiff for the delivery*], of the following goods, that is to say [*here enumerate the goods enumerated in the judgment*], and by the said judgment it was found and adjudged that the plaintiff will have sustained damages to the amount of £ [*here insert the sum assessed for damages if the goods be delivered*] if the said goods shall be delivered to the plaintiff under this warrant, and to the amount of £ [*here insert the sum assessed for damages in the event of the non-delivery of the goods*] if the said goods shall not be so delivered, and judgment being then given for the plaintiff, it was thereupon ordered that execution do issue for the delivery to the plaintiff, on payment by the plaintiff of the said sum of £ [*here insert the sum to be paid by plaintiff for the delivery*] of the said goods, and that the defendant should not have the option of retaining the said goods upon payment of the said sum of £ [*here insert the sum assessed for damages in the event of the non-delivery of the goods*], and that the plaintiff do recover against the defendant the said sum of £ [*here insert the sum assessed for damages if the goods be delivered*] for damages and £ for costs.

And it was further ordered that if the said goods or any part thereof should not be found within the district of this Court, the bailiff of this Court should distrain the defendant by all his lands and chattels within the district of this Court, till the defendant deliver the said goods or, at the option of the plaintiff, the said plaintiff should cause to be made of the defendant's goods the said sum of £ [*here insert the sum found for damages if the goods be not delivered*] or a due proportion thereof. And whereas the said goods have not been delivered according to the said order, and the plaintiff has expressed his option to have the said sum of £ [*here insert the sum assessed for*

damages in the event of non-delivery of the goods] made of the goods and chattels of the defendant: These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the defendant wheresoever they may be found, within the district of this Court (excepting the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds) the sum stated at the foot of this warrant, being the amount due to the plaintiff under the said order, including the costs of this execution, and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the defendant which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the cost of making and executing the same, and to pay what you shall have so levied to the registrar of this Court, and make return of what you have done under this warrant immediately upon the execution thereof

Given under the seal of the Court, this day of 186 .

By the Court,
Registrar of the Court.

To the High Bailiff of the said Court, and others the bailiffs thereof.

	£	*s.*	*d.*
Amount found for damages if the goods be not delivered			
Sum adjudged for costs			
Poundage for issuing this warrant . .			
Total amount to be levied . . .			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they may have been taken, unless they be of a perishable nature, or at the request of the defendant.

Application was made to the registrar for this warrant at minutes past the hour of in the fore [*or* after] noon of the day of 186 . 19 & 20 Vict c. 108, s. 46.

Allowance to Witnesses.

	£	*s.*	*d.*		£	*s.*	*d.*
Gentlemen, merchants, bankers, and professional men, *per diem* . . from	0	10	0	to	1	0	0
Tradesmen, auctioneers, accountants, clerks, and yeomen, *per diem*	0	5	0	to	0	10	0
Artisans and journeymen, *per diem*, . from	0	3	0	to	0	5	0
Labourers, and the like, *per diem*, . from	0	2	0	to	0	3	0

Travelling expenses, sum reasonably paid, but not more than sixpence per mile, one way.

If the witnesses attend in more than one cause, they will be entitled to a proportionate part in each cause only.

NOTE.—*It is considered to be unnecessary to give any rules with respect to taking acknowledgments of married women, as it is the duty of the attorney employed to prepare the certificate and affidavit and swear to the latter; and the course to be followed by the judge is laid down in the Act 3 & 4 W. IV. c. 74. The only duty for the registrar to perform, besides that of swearing the attorney to the affidavit, is that of putting his initials against all* ALTERATIONS, INTERLINEATIONS, *or* ERASURES *either in the* CERTIFICATE *or* AFFIDAVIT.

FORMS IN EQUITY, 1867.

GENERAL FORM OF HEADING AND CONCLUSION FOR PLAINTS.

No. of Plaint in Equity.
In the County Court of holden at
A. B., of, etc. [*address and description*], Plaintiff,
and
C. D., of, etc. [*address and description*], Defendant.
* * * * *
This plaint was filed by
of
Attorney for the plaintiff,
or by of

GENERAL FORM OF HEADING AND CONCLUSION FOR AFFIDAVITS.

No. of Plaint in Equity.
In the County Court of holden at
In the suit of A. B. *v.* C. D.
* * * * *
Sworn at in the County of
this day of one thousand eight hundred and sixty before me

GENERAL FORM OF HEADING AND CONCLUSION FOR PETITIONS.

Proceeding in Equity.
In the County Court of holden at
In the matter of
The petition of A. B., of, etc. [*address and description*].
* * * * *
This petition was filed by
of
Attorney for the Plaintiff,
or by

GENERAL FORM OF HEADING FOR NOTICES, ADMISSIONS, STATEMENTS, ORDERS, CERTIFICATES, AND WARRANTS.

Proceeding in Equity.
In the County Court of holden at
In the suit of A. B. *v.* C. D.

GENERAL FORM OF HEADING FOR AND CONCLUSION FOR DECRETAL ORDER OR DECREE OR ORDERS OF COMMITTAL.

No. of Plaint or Proceeding.
In the County Court of holden at on the day of 186 .
In the suit of A. B. *v.* C. D.
[*or* in the matter of the petition of]

Upon the hearing this day of Mr. for the plaintiffs and upon the hearing of Mr. for the defendants [*or if some of the defendants do not appear*, then for the defendants C. D., etc., and no one appearing for the defendants E. and F.]; it is ordered

* * * * *

Given under the seal of the Court this day of , 186 .
By the Court.
E. F., Registrar.

Take notice, that unless you obey the directions contained in this order, obedience thereto will be enforced in such manner as the law provides.

MEM. TO BE PLACED AT FOOT OF EVERY SUMMONS, NOTICE, DECREE, OR ORDER OF COURT, OR ANY OTHER PROCESS OF THE COURT.

Hours of attendance at the office of the registrar [*place of office*] from ten till four, except on [*here insert the day on which the office will be closed*], when the office will be closed at one.

1.

UNDERTAKING BY NEXT FRIEND OF INFANT TO BE RESPONSIBLE FOR DEFENDANT'S COSTS.

In the County Court of holden at

I, the undersigned , being the next friend of A. B., who is an infant, and who is desirous of entering a plaint [*or* of taking proceedings] in this Court against C. D., of, etc., hereby undertake to be responsible for the costs of the said C. D., of, etc., in the cause, and that if the said A. B. fail to pay to the said C. D., when and in such manner as the Court shall order, all such costs of such cause as the Court shall direct him to pay to the said C. D., I will forthwith pay the same.

Dated this day of

(Signed)

2.

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SUBSTITUTED SERVICE.

I, J. S., of [*address and description*] make oath and say as follows:—

State facts showing that defendant has been within the jurisdiction of the County Courts at some time not more than two years before the plaint was filed, and that he is beyond the seas. Or, that upon inquiry at his usual place of abode (if he had any), or at any other place or places where prior to the time when the plaint was filed he might probably have been met with, he could not be found so as to be served, and that in either case there is just ground to believe that he has gone out of the realm or otherwise absconded to avoid being served, and that service on J. N. will be effective to reach C. D.

Then state deponent's means of knowledge of the facts deposed to.

Sworn, etc.

3.

ORDER FOR SUBSTITUTED SERVICE.

It appearing to me, upon the affidavit of that it is desirable for the purposes of this suit that service of the plaint be made upon at , and that such service be deemed good service on the defendant C. D., I do order that service of the plaint and summons in this suit be deemed good service upon the said defendant C. D.

Dated this day of .

J. S., Judge.

4.

ADMINISTRATION.—[Clause 1 of Sect. 1 of the Act.]

By Creditor.

A. B., the above-named plaintiff, states as follows:—

1. E. F., late of was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of [*here insert nature of debt and security, if any*].

2. The said E. F., duly made his last will, dated the day of and thereof appointed C. D. executor [*or* devised his estate in trust, etc., *or* died intestate, *as the case may be*].

3. The said will was duly proved by the said C. D. [*or* letters of administration were granted, etc.].

4. The defendant has possessed himself of the personal [and real, *or* the proceeds of the real] estate of the said E. F., and has not paid the plaintiff his said debt.

5. The said E. F. died on or about the day of and had his last place of abode within the jurisdiction of this Court. [*Omit this if C. D. has his place of abode within the jurisdiction of this Court*].

6. The whole of the personal [and real] estate of the said E. F. does not exceed in amount [*or* value] the sum of £500.

7. The plaintiff prays that an account may be taken of the personal [and real] estate of the said E. F. deceased, and that

the same may be duly administered under the decree of the Court, and for such further or other relief as the Court may think fit.

By Legatees (Specific).

Omit paragraph 1, and commence paragraph 2. E. F., late of , duly made his last will, dated the day of , and thereof appointed C. D. executor, "and by such will bequeathed to the plaintiff [*here state the specific legacy*]."

For paragraph 4, substitute—

The defendant is in possession of the personal estate of the said E. F., and, inter alia, of the said [*here name the subject of the specific bequest*].

For the commencement of paragraph 7, substitute—

The plaintiff prays that the defendant may be ordered to deliver to him the said [*here name the subject of the specific bequest*], or that, etc.

By Legatees (Pecuniary).

Omit paragraph 1, and substitute for paragraph 2—E. F., late of , duly made his last will, dated the day of , and thereof appointed C. D. executor, and by such will bequeathed to the plaintiff a legacy of £ .

In paragraph 4, substitute "legacy" for "debt."

By Legatees (Residuary).

Omit paragraph 1, and substitute for paragraph 2—E. F., late of duly made his last will, dated the day of , and thereof appointed C. D. executor, and by such will bequeathed to the plaintiff the residue [*or* a part of the residue] of his personal [*or* and the proceeds of his real] estate.

In paragraph 4 substitute "the residue [*or* share of residue] so bequeathed" for "said debt."

Next of Kin.

For paragraphs 1, 2, 3, and 4, substitute—

1. E. F. late of was at the time of his death possessed and entitled of personal estate.

2. He died on or about the day of intestate.

3. Letters of administration were duly granted to the defendant, and that he has possessed himself of the personal estate of the deceased [*leave out* "letters of administration were duly granted to the defendant and that" *if none have been granted*].

4. That the plaintiff is next of kin [*or* one of the next of kin] of the said E. F.

5.

EXECUTION OF TRUSTS.

[Clause 2 of Section 1 of the Act.]

Plaint in Equity.

In the County Court of holden at

A. B. of, etc. [*address and description*] Plaintiff,

and

C. D. of, etc. [*address and description*], the *or* one of the cestui que trusts (*see Rule* 6 *of* 15 *&* 16 *Vict. cap.* 86 *sec.* 42) Defendant.

A. B., the above named plaintiff, states as follows:—

1. He is one of the trustees under a deed of settlement bearing date on or about the day of made upon the marriage of the said E. F. and G. H., the father and mother of the defendant [*or* a deed of assignment of the estate and effects of E. F., for the benefit of C. D. the defendant, and other the creditors of E. F.]

2. The said A. B. has taken upon himself the burden of the said trust, and is seised of [*or* in possession of *or* of the proceeds of] the lands, tenements, and hereditaments, [goods and chattels], conveyed [*or* assigned] by the before mentioned deed.

3. The trust estate [*or* fund] does not exceed in amount [*or* value] the sum of £500.

4. The said C. D. claims to be entitled to a beneficial interest under the before mentioned deed.

5. The plaintiff is desirous to account for all the rents and profits of the said lands, tenements, and hereditaments [and the proceeds of the sale of the said *or* part of the said lands, tenements, and hereditaments, *or* goods and chattels, *or* the proceeds of the sale of *or* part of the said goods and chattels, *or* the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of said trust estate may be administered in the Court for the benefit of the said C. D. the defendant, and all other persons who may be interested in such administration, in the presence of the said C. D. and such other persons so interested as the Court may direct, or that the said C. D. may show good cause to the contrary.

[*N.B.—Where the suit is by a cestui-que trust, the plaint may be modelled, mutatis mutandis, on the plaint by a legatee, and if breach of trust is alleged by way of wilful default or otherwise, the plaints shall shortly state the circumstances and pray for consequential relief.*]

6.

FORECLOSURE.—[Clause 3 of Section 1 of the Act.]

A. B., the above-named plaintiff, states as follows:—

1. By an indenture of mortgage bearing date on or about the day of 18 , a freehold [copyhold *or* leasehold] cottage, with the garden and appurtenances, situated within the jurisdiction of this Court, were conveyed [*or* assigned] by the defendant to him the plaintiff, his heirs, [*or* executors, administrators,] and assigns, for securing the principal sum of £ together with interest thereon after the rate of £5 per centum per annum, subject to redemption upon payment by the said defendant of the said principal and interest at a day long since past.

2. There is now due from the defendant to the plaintiff the sum of £ for principal and interest on the said mortgage.

3. The plaintiff prays that the Court will order the defendant to pay him the said sum of £ with such further interest

as may accrue between the filing of the plaint and the day of payment, and also the costs of this suit, on some day to be named by the Court, and in default that the equity of redemption of the said mortgaged premises may be foreclosed, or that the said premises may be sold, and the proceeds applied in and towards the payment of the said principal, interest, and costs; and he prays that for that purpose all proper directions may be given and account taken by the Court.

REDEMPTION.

Transpose parties and also the facts in paragraph 1.

For paragraph 2 substitute—

2. There is now due from the plaintiff to the defendant, for principal and interest on the said mortgage, the sum of £ which the plaintiff is ready and willing to pay to the defendant, of which the defendant before filing this plaint had notice.

For paragraph 3 substitute—

The defendant prays that he may redeem the said premises, and that the defendant may be ordered to re-convey [*or* re-assign] the same to him upon payment of the said sum of £ and interest, with such costs as the Court may order (if any), upon a day to be named by the Court, and that the Court will give all proper directions for the preparation and execution of such re-conveyance [*or* assignment], and doing such other acts as may be necessary to put him into possession of the said premises, freed from the said mortgage.

7.

SPECIFIC PERFORMANCE.—[Section 9 of 30 & 31 Vict. c. 142.]

A. B., the above-named plaintiff, states as follows:—

1. By an agreement dated the day of and signed by the above-named defendant C. D., he the said C. D. contracted to buy [*or* sell to] him certain property, therein described and referred to, for the sum of £

2. He has applied to the said C. D. specifically to perform the said agreement on his part, but that he has not done so.

3. The said A. B. has been and still is ready and willing specifically to perform the agreement on his part, of which the said C. D. has had notice.

4. The plaintiff prays that the Court will order the said A. B. specifically to perform the said agreement, and to do all acts necessary to put the said A. B. in full possession of the said property [*or* to accept a conveyance and possession of the said property], and to pay the costs of the suit.

[*N.B.—In suit for delivery up to be cancelled of any agreement, omit paragraphs* 2 *and* 3, *and substitute a paragraph stating generally the grounds for requiring the agreement to be delivered up to be cancelled, such as that the plaintiff signed it by mistake, under distress, or by the fraud of the defendant, and alter the prayer according to the relief sought.*]

8.

UNDER TRUSTEE RELIEF ACT.—[Clause 5 of Section 1 of the Act.]

Showeth,

1. That by a deed of settlement bearing date the day of

made upon the marriage of C. D. with E. F. certain freehold property in the settlement mentioned was conveyed to [*or* that C. D. deceased, by his will bearing date the day of and proved on the day of by your petitioner and G. H. in the Prerogative Court of the Archbishop of Canterbury, certain freehold property in the will mentioned was devised to] the petitioner, together with G. H., upon certain trusts, inter alia [*here set out the clause or portion of the trust deed or will upon which the order of the Court is required*].

2. That the said G. H. died on or about the day of leaving the petitioner surviving trustee.

3. That disputes and doubts have arisen under the clause before set out, as to whether [*here set out the specific question upon which the opinion, advice, or direction of the Court is required*].

4. That the trust estate [*or* fund] to which this proceeding relates does not exceed in value the sum of £500.

5. That the persons interested in this application are I. J. of, etc. [*address and description*], K. L. of, etc.

6. Your petitioner prays the Court to declare its opinion, advice, or direction whether [*here state specific question which the Court is asked to determine*].

N.B.—By Stat. 23 & 24 *Vict. c.* 38 *s.* 9, *this must be signed by Counsel.*

9.

UNDER TRUSTEE ACTS.

Showeth,

1. That C. D. deceased, by his will bearing date the day of and proved on the day of by your petitioner and G. H. in the Prerogative Court of the Archbishop of Canterbury, certain freehold property in the will mentioned was devised to [*or* that by deed of settlement bearing date the day of made upon the marriage of C. D. with E. F. certain freehold property in the settlement mentioned was conveyed to] the petitioner, together with G. H. upon certain trusts.

2. That the said G. H. died on or about the day of leaving the petitioner surviving trustee.

3. That the said trusts are still unexecuted, and that the petitioner is unable by reason of having left the neighbourhood [*or* his bodily infirmity, *or any cause for relinquishing trust*] *further to execute the said trusts;* that it is for the advantage of the parties beneficially interested in the due execution of the trust that new trustees be appointed by the Court in the place of the petitioner.

4. That and of, etc. [*address and description*] are proper persons to appoint as such trustees.

5. That I. J. of, etc. [*address and description*], and L. M. of, etc. [*address and description*], are the persons beneficially interested in the said trust.

6. Your petitioner prays that the said and or some other persons to be named by the Court, be appointed trustees in

his place and stead, and that the cost of the proceeding be ordered to be paid out of the trust fund, and to give such directions as may be necessary for executing such order.

10.

MAINTENANCE AND ADVANCEMENT OF INFANTS.

[Clause 6 of Section 1 of the Act.]

Showeth,

1. That he is guardian [*or* trustee] of C. D., an infant, and that by the will of E. F. a sum of £ was bequeathed to the petitioner, upon trust to apply the income thereof to the maintenance and education of the said C. D. during his minority, and to pay the said principal sum of £ to the said C. D. upon his attaining the age of twenty-one years.

2. That the said C. D. is now of the age of fourteen years or thereabouts, and is now resident within the jurisdiction of this Court, and the petitioner has heretofore spent the whole of the accruing interest upon his maintenance and education.

3. That in the opinion of your petitioner it would be greatly to the interest and advancement of the said C. D. if a sum of £ , part of the said principal money of £ , was now expended by the petitioner in payment to G. H. of saddler, as a premium to the said G. H. to take and receive the said C. D. as his indoor apprentice.

4. The petitioner prays that he may direct him to use and appropriate the said sum of £ , part of the said principal trust money or sum of £ for the apprenticeship of the said infant accordingly.

11.

PARTNERSHIP.

[Clause 7 of Section 1 of the Act.]

A. B., the above-named Plaintiff, states as follows:—

1. He and the said C. D. the Defendant have been for the space of years [*or* months] last past carrying on business together at within the jurisdiction of this Court, under certain articles of partnership in writing, signed by them respectively [*or* under a certain deed sealed and executed by them respectively, *or* under a verbal agreement between them, the said plaintiff and defendant].

2. Divers disputes and differences have arisen between the plaintiff and defendant as such partners, whereby it has become impossible to carry on the said business in partnership with advantage to the partners.

3. The whole of the property, stock, and credits of such partnership do not exceed in value the sum of £500.

4. The plaintiff desires to have the said partnership dissolved, and he is ready and willing to bear his share of the debts and obligations of the partnership according to the terms of the said articles [deed *or* agreement].

5. The plaintiff prays the Court to decree a dissolution of the said partnership, and that the accounts of the said partnership trading may be taken by the Court, and the assets thereof realized, and that each party may be ordered to pay into Court any balance due from him upon such partnership account, and that the debts and liabilities of the said partnership may be paid and discharged, and that the cost of the suit may be paid out of the partnership assets, and that any balance remaining of such assets, after such payment and discharge, and the payment of the said costs, may be divided between the plaintiff and the defendant, according to the terms of the said articles [deed *or* agreement], or that if the said assets shall prove insufficient, he the plaintiff and the said defendant may be ordered to contribute in such proportions as shall be just to a fund to be raised for the payment of and discharge of such debts, liabilities and costs. And to give such other relief as the Court shall think fit.

[*N.B.—In suits for winding-up of any partnership omit the prayer for dissolution; but instead thereof insert a paragraph stating the fact of the partnership having been dissolved.*]

12.

NOTICE OF APPLICATION FOR ORDER IN THE NATURE OF INJUNCTION.

[Clause 8 of Section 1 of the Act.]

Take notice that I, A. B., intend to apply at the sitting of the Court as aforesaid on the day of [*or* to Mr. Judge at his sittings *or* at on the day of *as the case may be*] for an order in the nature of an injunction to restrain C. D. from further prosecuting an action which he has commenced against me in the Exchequer of Pleas to recover damages for the breach of the contract for the specific performance of which this suit was commenced [*or* to restrain him from receiving and giving discharges for any of the debts due to the partnership in the matter of the partnership between us for the winding-up of which the suit was commenced, *or* from digging the turf from the land which was agreed to be sold by him to me by the agreement the specific performance of which this suit is commenced to enforce, *or as the case may be*].

Dated this day of 186 .

A. B.

To C. D.

[*N.B.—Where the order in the nature of an injunction is to be applied for against a party whose name and address does not appear upon any proceeding already filed in this suit, it must be stated in full to enable the High Bailiff to serve the notice.*]

13.

SUMMONS ON PLAINT.

No. of Plaint in Equity.

In the County Court of holden at

(*Seal.*)

A. B. [*address, description*] Plaintiff,

and

C. D. [*address, description*] Defendant.

You are hereby summoned to appear at the County

Court, to be holden at on the day of at the hour of in the noon, to show cause why the relief prayed for in the plaint hereunto annexed should not be granted.

Dated this day of 186 .

Registrar.

To C. D. Defendant [*or one of the Defendants*].

N. B.—If you do not attend either in person or by your attorney at the time and place above mentioned, such decree or order will be made and proceedings taken as the Judge may think just and expedient.

[*Endorsement on Summons.*]

If you desire to lessen the amount of costs which you may be put to, you should follow such of these directions as may apply.

If you desire to admit the truth of the allegations in the plaint, and to submit to the judgment of the Court, you may, at any time before the return day of the original summons, appear before the registrar, and in his presence sign an admission of the truth of the plaint, and a consent to abide by and perform any decree or order the Court may make.

If you desire to disclaim any interest in the subject matter of the suit, or if you intend at the hearing to deny any of the statements in the plaint, or raise any question of law upon such statement without admitting the truth thereof, you may deliver to the registrar, within eight days after the service of the summons upon you, a statement signed by you to that effect.

If you intend to rely on a set-off, infancy, coverture, a statute of limitations, or a discharge under a bankrupt or an insolvent Act, as a defence, you must give notice of such special defence to the registrar five days before the day of hearing, and such notice must contain the particulars required by "The County Court Rules;" and you must deliver to the registrar as many copies of such notice as there are plaintiffs, and an additional copy for the use of the Court. If your defence be a set-off, you must, with each notice thereof, deliver to the registrar a statement of the particulars thereof.

Summonses for witnesses and for the production of documents will be issued upon application at the office of the registrar of the Court upon payment of the proper fee.

14.

NOTICE TO ADMIT AND INSPECT.

Take notice that the Plaintiff [*or* Defendant *or* Petitioner] proposes to adduce in evidence on the trial in this cause [*or* matter] the several documents hereunder specified], and that the same may be inspected by the defendant [*or* plaintiff *or* petitioner], his attorney or agent, at on between the hours of ; and the defendant [*or* plaintiff, *or* petitioner] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been; that such as are specified as copies are true copies; and that such docu-

ments as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively, saving all just exceptions to the admissibility of all such documents as evidence on such trial.

Dated the day of

G. H., Attorney for

To E. F., Attorney for

ORIGINALS.

Description of the Documents.	Date.

COPIES.

Description of Documents.	Dates.	Original or Duplicate served, sent, or delivered, when, how, and by whom.

15.

APPLICATION FOR SUMMONS TO PRODUCE.

To the Registrar of the above Court.

I, A. B. [*or* C. D.], hereby apply for a summons to issue, calling upon of to attend to Court upon the day of , and then and there to produce the following documents.

A. B. [*or* C. D.]

ORIGINALS.

Description of the Documents.	Date.

Copies.

Description of Documents.	Dates.	Original or Duplicate served, sent, or delivered, when, how, and by whom.

16.

Summons to Witness.

No. of Plaint in Equity.

In the County Court of holden at

In the suit of A. B. *v.* C. D.

You are hereby required to attend at [*Court House in*] on the day of 186 , at the hour of in the noon, to give evidence in the above cause on behalf of the [*plaintiff or defendant as the case may be*], and then and there to have and produce [*the several documents hereunto specified*], and all other books, papers, writings, and other documents relating to the said action, which may be in your custody, possession, or power. In default of your attendance you will be liable to a penalty of £10.

Dated this day of 186 .

Registrar.

To

[*Here insert list of documents mentioned in the application for the Summons.*]

17.

Defendant's Admission.

I, the undersigned defendant, admit the truth of the allegations in the plaint, and hereby submit to the judgment of the Court thereon.

(Signed) C. D., defendant.

Signed in the presence of

[*This paper marked* (A.) *is the paper referred to in the annexed affidavit.*]

18.

Affidavit of Signature to Defendant's Admission.

I, of , gentleman, an attorney of Her Majesty's Court of at Westminster, make oath and say, that I was present on the day of one thousand eight hundred and sixty , and did see the above-named C. D., the defendant, sign the statement hereunto annexed, marked with the letter A., and that the name set to the said statement is in the handwriting of the defendant, and that the name set to the said statement as the witness attesting the same is in my handwriting.

19.

DEFENDANT'S STATEMENTS.

I the undersigned defendant [*or* one of the defendants] disclaim all interest under the will of the said E. F., in the plaint named [*or* as heir-at-law of, *or* as next of kin, *or* one of the next of kin of E. F. deceased in the said plaint named].

Or, I the undersigned defendant state that I admit [*or* deny] [*here repeat in the language of the plaint the statements admitted or denied*].

Or, I the undersigned defendant submit that upon the facts stated in the plaint it does not appear that there is any agreement which can be legally enforced [*or* that it appears upon the said plaint that I am jointly liable with one E. F., who is not a party to the suit, and not severally liable as by the plaint appears, *or* that it appears by the said plaint that G. H. should have been a joint plaintiff with the said A. B. in the said suit, *or as the case may be*].

Or that the plaintiff has conveyed [*or* assigned] his interest in the said mortgage [*or* equity of redemption] to one I. J., *or* that I have conveyed or assigned to H. L. by way of further charge for securing the sum of £ , the equity of redemption in the property sought by the suit to be foreclosed].

Or that since the dissolution of the partnership the plaintiff has executed a deed under seal, whereby the plaintiff covenants to discharge all debts and liabilities of the partnership, and generally to release me from all claims and liabilities either by or to himself and others in respect of the said partnership trading [*or as the case may be*].

(Signed) C. D., Defendant.

Where filed by attorney add—

This statement was filed by
of
Attorney for the defendant.

20.

DECRETAL ORDER.—ADMINISTRATION SUIT.

It is ordered that the following accounts and inquiries be taken and made; that is to say,

In Creditor's Suit.

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In Suits by Legatees.

An account be taken of the legacies given by the testator's will.

In Suits by next of Kin.

An inquiry be made and account taken of what, or of what share, if any, the plaintiff is entitled to as next of kin [*or* one of the next of kin] of the intestate.

[*After the first paragraph, the decretal order will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, devisees, heirs-at-law, and next of kin. In suits by claimants other than creditors, after the first paragraph in all cases an order to*

inquire and take an account of creditors will follow the first paragraph, and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.]

3. An account of the funeral and testamentary expenses.

4. An account of the personal estate of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

5. An inquiry what part (if any) of the personal estate of the deceased are outstanding and undisposed of.

6. And it is further ordered, that the defendant do, on or before the day of next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or to his use.

7. And that if the registrar shall find it necessary for carrying out the objects of the suit to sell any part of the personal estate of the deceased, that the same be sold accordingly.

8. And that Mr. be receiver in the suit [*or* proceeding], and receive and get in all outstanding debts and outstanding personal estate of the deceased, and pay the same into the hands of the registrar [and shall give security by bond for the due performance of his duties to the amount of £ .]

9. And it is further ordered, that if the personal estate of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say,

10. That an inquiry be made what real estate the deceased was seised of or entitled to at the time of his death.

11. What are the incumbrances (if any) affecting the real estate of the deceased, or any part thereof.

12. An account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale herein-after directed.

13. And that the real estate of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold, with the approbation of the judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent.

14. And it is ordered, that shall have the conduct of the sale of the real estate, and shall prepare the conditions and contracts of sale, and the abstract of title, subject to the approval of the registrar, and that in case any doubt or difficulty shall arise the papers shall, with the like approval, be submitted to , Esquire, to settle.

15. And it is further ordered, that, for the purpose of the inquiries herein-before directed, the registrar shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the registrar to give the most useful publicity to such inquiries.

16. And it is ordered, that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of and that the registrar do

certify the result of the inquiries and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of

17. And lastly it is ordered, that this suit [*or* matter] stand adjourned for making a final decree to the day of

[*Such part only of this decretal order is to be used as is applicable to the particular case.*]

21.

FORM OF ORDER UNDER ORDER VI. RULE 14, OR UNDER ORDER XII.

It appearing to me that it will be for the benefit of the estate that the remaining outstanding debts be sold, I do order that the debts now due to the estate of E. F., the testator [*or* intestate] in the plaint in this suit mentioned, be sold as soon as conveniently may be by [the receiver] by private contract [*or* public auction] for the highest price that can be obtained for the same.

Dated this day of

J. S., Judge.

22.

FORM OF ORDER UNDER ORDER VI. RULE 14, OR UNDER ORDER XII.

It appearing to me that it is necessary for carrying out the objects of this suit that the real estate [*or* part of the real estate] of the deceased be sold, I do order that all that freehold [copyhold *or* leasehold] messuage or tenement, etc. [*setting out parcels, as in last conveyance*] being the real [*or* part of the real] estate of E. F., late of in the county of deceased, the testator [*or* intestate in the plaint in the suit mentioned], be offered for sale by public auction at the Hotel at by MR. auctioneer, and be then and there sold [provided the sum bid for the same be not less than £ *or*] to the highest bidder without reserve.

Dated this day of

J. S., Judge.

23.

DECRETAL ORDER FOR REFERENCE IN FORECLOSURE SUIT BY LEGAL MORTGAGE.

It is ordered that it be referred to the registrar to take an account of what is due to the plaintiff for principal and interest on the mortgage mentioned in the plaint (making allowance on one side or the other for any rents or profits received by the plaintiff and for any sums of money lawfully expended by the plaintiff about the mortgaged premises) and to tax the plaintiff's

costs of this suit, and that the registrar do certify to the Court on the day of what he shall find to be due for principal and interest as aforesaid and for costs: And upon the defendant paying into Court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months after the registrar shall have presented his certificate, it is ordered that the plaintiff do reconvey the said mortgaged premises, free and clear from all incumbrances done by him, or any claiming by, from, or under him, and do deliver up to the registrar all deeds and writings in his custody or power relating thereto, and that upon such reconveyance being made, and deeds and writings being delivered up, the registrar shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest, and costs; but in default of the defendant paying into Court such principal, interest, and costs as aforesaid by the time aforesaid, then it is ordered, that the defendant do stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to the said premises, and the registrar is to settle the conveyance if the parties differ about the same; and it is further ordered, that after the expiration of the said six months, the plaintiff shall be at liberty to apply to the Court for a final decree for the foreclosure of the said mortgage.

[N.B.—*Where the state of the account is ascertained at the first hearing, instead of the order of reference to the registrar, begin* It is declared that the sum of £ is now due to the plaintiff for principal and interest on the mortgage mentioned in the plaint, and it is ordered that the registrar do tax the plaintiff's costs of this suit, and that]

24.

DECRETAL ORDER OF SALE IN A SUIT BY A LEGAL OR EQUITABLE MORTGAGEE OR PERSON ENTITLED TO A LIEN.

It is ordered that it be referred to the registrar to take an account of what is due to the plaintiff for principal and interest on the mortgage [*or* equitable mortgage *or* lien] mentioned in the plaint, and to tax the plaintiff's costs of this suit, and that the registrar do certify to the Court on the day of what he shall find to be due for principal and interest as aforesaid, and for costs: And upon the defendant paying into Court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months after the registrar shall have presented his certificate, it is ordered that the plaintiff [do reconvey the said mortgaged premises free and clear from all incumbrances done by him, or any claiming by, from, or under him, and] do deliver up to the registrar all deeds and writings in his custody or power relating thereto, and that upon such reconveyance being made, and deeds and writings being delivered up, the registrar shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest, and costs; but in default of the defendant paying into Court such principal, interest, and costs as aforesaid by the time aforesaid, then it is ordered that the said mortgaged premises [*or* the premises subject to the said equitable mortgagee *or* lien]

be sold with the approbation of the registrar: And it is ordered that the money to arise by such sale be paid into Court, to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal, interest, and costs as aforesaid, and that the balance (if any) shall be paid to the defendant.

25.

DECRETAL ORDER.—DISSOLUTION OF PARTNERSHIP.

It is declared that the partnership in the plaint mentioned between the plaintiff and defendant ought to stand dissolved as from the day of , and it is ordered that the dissolution thereof as from that day be advertised in the London Gazette, etc.

And it is ordered that be the receiver of the partnership estate and effects in this suit, and do get in all the outstanding book debts and claims of the partnership.

And it is ordered that the following accounts be taken:—

1. An account of the credits, property, and effects now belonging to the said partnership.

2. An account of the debts and liabilities of the said partnership.

3. An account of all dealings and transactions between the plaintiff and defendant from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the registrar may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties are to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the day of , and that the registrar do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

And lastly it is ordered that this suit stand adjourned for making a final decree to the day of .

26.

FINAL DECREE FOR FORECLOSURE.

Whereas it appears to the Court that the defendant has not paid into Court the sum which was on the day of last certified by the registrar to be due to the plaintiff for principal and interest upon the mortgage in the plaint mentioned, and for costs, pursuant to the decretal order made in this suit on the day of last, and that the period of six months has elapsed since the said day of .

It is ordered that the defendant do stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to the said mortgaged premises.

27.

PARTNERSHIP.

Final Decree.

It is ordered that the fund now in Court, amounting to the sum of £ , be applied as follows :—

1. In payment of the debts due by the partnership set forth in the registrar's certificate, amounting in the whole to £ .

2. In payment of the costs of all parties in this suit, amounting to £ : [*These costs must be ascertained before the decree is drawn up.*]

3. In payment of the sum of to the plaintiff as his share of the partnership assets, and of the sum of £ , being the residue of the said sum of £ now in Court to the defendant as his share of the partnership assets.

[*Or*, And that the remainder of the said sum of £ be paid to the said plaintiff [*or* defendant] in part payment of the sum of £ certified to be due to him in respect of the partnership accounts.

And that the defendant [or plaintiff] do, on or before the day of pay to the plaintiff [*or* defendant] the sum of £ , being the balance of the said sum of £ due to him, which will then remain due].

28.

NOTICE OF DECRETAL ORDER TO ABSENT PARTY.

Take notice that on the day of the decree of which a copy is hereunto annexed was made in this cause, and that from the service of this notice you will be bound by the proceedings in the above cause in the same manner as if you had been originally made a party to the suit, and that you may attend the proceedings under the said decretal order, and that you may apply to the Court to add to the decretal order.

Dated this day of 186 .

Registrar.

To

29.

NOTICE TO CREDITOR TO PROVE HIS CLAIM.

You are hereby required to prove the claim sent in by you against the estate of A. B., deceased, by filing such affidavit as you may be advised in support thereof, and by giving notice thereof to me, on or before the day of next, and by attending at my office on the day of 186 , at o'clock in the noon, being the time appointed for adjudicating on the claim.

Dated this day of 186 .

Registrar.

To

30.

NOTICE TO CREDITOR OF ALLOWANCE OF CLAIM.

The claim sent in by you against the estate of A. B., deceased, has been allowed at the sum of , with interest thereon at per cent. per annum, from the day of 186 , and for costs.

[*If part only allowed, add*, If you claim to have a larger sum allowed, you are hereby required to prove such further claim, by filing such affidavit as you may be advised in support thereof, and by giving notice thereof to me on or before the day of next, and by attending at my office on the day of 186 , at o'clock in the noon.

Dated this day of 186 .

Registrar.

31.

REGISTRAR'S CERTIFICATE.

In obedience to the decretal order of this Court made in the above suit, I hereby certify that the result of the accounts and inquiries [*or* of the sale and apportionment] which have been taken and made in pursuance of the made in this dated the day of 186 , is as follows.

The plaintiffs and defendants have attended by themselves or by their respective attorneys.

Notice of Decretal Order.

Notice of the said decretal order of the day of 186 , has been served upon .

The persons so served include all the now living, and the personal representatives of such of them as are dead, except such as are parties to this suit, and except hereinafter named .

Service of notice of the said decretal order upon the said was dispensed with.

Personal Estate Account.

The defendant the executor [*or* administrator] of the testator [*or* intestate] named in the said have received personal estate to the amount of £ , and they have paid or are entitled to be allowed on account thereof sums to the amount of £ , leaving a balance due from [*or* to] them of £ on that account.

References to Account.

The particulars of the above receipts and payments appear in the account marked (A), verified by the affidavit of the said defendant filed the day of and the account marked (B), verified by the affidavit of filed the day of and which accounts are to be filed with this certificate.

Variations from Accounts.

Except that in addition to the sums appearing in such account to have been received, the said defendant [*or* plaintiff] is [*or* are] charged with the following sums; (that is to say) £ , and except that of the items of disbursement in the said account, I have disallowed those numbered , and I have deducted

from the item numbered the sum of £ , and from the item numbered the sum of £ , and in addition to the disbursements appearing in such account the said defendant ha paid and been allowed the sum of £ .

Special Allowances in Accounts.

The payments allowed to the said defendant [*or* plaintiff] in the said account include the sum of £ paid into Court to the credit of this cause, on the day of 186 .

Reference to Transcript of Account.

The before-mentioned account marked A. has been altered, and the account marked A. B., and which is also to be filed with the certificate, is a transcript of the said account marked A. as altered and passed.

No Personal Estate received.

The defendant the executor [*or* administrator] of the testator [*or* intestate] named in the said have not, nor hath any or either of them, or any person or persons by their or any or either of their order, or for their or any or either of their use, received any part of the personal estate of the said testator [*or* intestate].

Funeral Expenses.

The funeral expenses of the testator [*or* intestate], amounting to the sum of £ have been paid and are allowed the defendant [*or* plaintiff] the executor [*or* administrator] of the said testator [*or* intestate] in the said account of personal estate herein-after mentioned].

Debts.

The debts of the testator [*or* intestate, including the plaintiff's] which have been allowed are set forth in the schedule hereto, and with the interest thereon, and costs mentioned in the said schedule, are due to the plaintiff and the other persons named therein, and amount altogether to . No other person has been allowed, or come in and proved, any debt against the estate of the said testator [*or* intestate], and the time fixed by advertisement for that purpose has expired.

Such of the said debts as are specialty are set forth in the first part of the said schedule, and amount to ; such as are simple contract are set forth in the second part of the said schedule, and amount to £ .

Interest on Debts.

The interest on such debts is computed down to the date of this certificate, and after the rate of £4 per centum per annum, from the day of 186 , the date of the said decretal order, unless otherwise specified in the said schedule.

Legacies and Annuities.

The legacies given by the testator, other than annuities, are set forth in the first part of the schedule hereto, and, with the interest therein mentioned, remain due to the persons therein named, and amount altogether to £ .

The annuities given by the testator, with the arrears due thereon, are set forth in the second part of the said schedule. Such arrears amount to £ .

Interest on Legacies.

The interest on such legacies is computed down to the date of this certificate, and after the rate of £4 per centum per annum, from the day of 186 , the end of one year after

the testator's death, unless otherwise specified in the said schedule.

The arrears of the annuities are computed to the date of this certificate, and from the testator's death, unless otherwise specified in the said schedule.

Outstanding Estate.

The personal estate of the said testator [*or* intestate] [not specifically bequeathed] outstanding or undisposed of consists of the particulars set forth in the schedule hereto.

Real Estate.

The real estate which the said testator [*or* intestate] was seised of or entitled to consist of the particulars set forth in the schedule hereto.

Incumbrances on Real Estate.

The incumbrances affecting the said testator's [*or* intestate's] real estate are specified in the schedule hereto.

Rents and Profits Account.

The defendants [*or* plaintiff] the trustee named in the said decretal order have received rents and profits of the testator's real estate to the amount of £ and they have paid or are entitled to be allowed on account thereof sums to the amount of £ , leaving a balance due from [*or* to] them of £ on that account.

No Rents and Profits received.

The defendants [*or* plaintiff] the trustees named in the said decretal order have not, nor hath any or either of them or any person or persons by their or any or either of their order, or for their or any or either of their use, received any sum or sums of money on account of the rents and profits of the testator's [*or* intestate's] real estate.

Next of Kin.

The next of kin, according to the statutes for the distribution of the effects of intestates, of the intestate named in the said living at the time of his death were of whom the said have since died.

The legal personal representative of the said
The legal personal representative of the said
The legal personal representative of the said

Dated this day of .

Registrar.

32.

NOTICE THAT REGISTRAR'S CERTIFICATE MAY BE INSPECTED.

Take notice that the certificate of the result of the inquiries made and accounts taken by me under the decretal order of this Court made on the day of in this cause lies in my office and can be inspected by you up to and inclusive of the day of [*here insert the day before the cause is to be further heard*].

Registrar.

To

33.

BOND TO BE GIVEN BY A RECEIVER.

Know all men by these presents, that we, A. B. of, etc., and C. D. of, etc., and E. F. of, etc., are jointly and severally held and firmly bound to G. H., Registrar of the County Court of holden at , in £ to be paid to the said G. H., or his certain attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves, and each and every of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this day of one thousand eight hundred and

And whereas a plaint in equity has been filed in this Court by A. B. against C. D. for the purpose of [*here insert object of suit*].

And whereas the said A. B. has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the real [*or* freehold *or* copyhold *or* leasehold] estate [*or* estates] [and to get in the outstanding personal estate] of C. D., the testator in the said plaint named.

Now the condition of this obligation is such, that if the above-bounden A. B. do and shall duly account for all and every the sum and sums of money which he shall so receive on accounts of the rents and profits of the real estates, and in respect of the personal estate, of the said C. D. [*or as may be*] at such periods as the said Court shall appoint, and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void and of none effect, otherwise shall remain in full force and virtue.

A. B. (L.S.)
C. D. (L.S.)

Signed, sealed, and delivered by the above-bounden in the presence of

NOTE.—*If deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond, and will not require a stamp.*

34.

WARRANT OF EXECUTION ON A DECREE OR ORDER OF THE COURT FOR THE PAYMENT OF MONEY.

Whereas on the day of 186 , this Court did, in the matter of this suit, decree [*or* order] that A. B. [*or* C. D.] should pay to C. D. [*or* A. B.] [*or* should pay into Court] the sum of : And whereas a copy of such decree [*or* order] was duly served upon A. B. [*or* C. D.], as the case may be: And whereas the said A. B. [*or* C. D.] has not paid the said sum of money according to the said decree [*or* order]: These are, therefore, to require and order you forthwith to make a levy, by distress and sale of the goods and chattels of the said A. B. [*or* C. D.], wheresoever they may be found within the district of this Court, (excepting the wearing apparel and bedding of him or his family, and the tools and implements of his trade,

if any, to the value of five pounds,) the sum stated at the foot of this warrant, being the amount directed to be paid by the said decree [*or* order], including the costs of this execution, and also to seize and take any money or bank notes (whether of the Bank of England or of any other Bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of A. B. [*or* C. D.] which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this Court, and make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court, this day of 186 .

By the Court.

Registrar.

To the High Bailiff of the said Court,
and others the bailiffs thereof.

Amount ordered to be paid . .
Costs . . . . . .

Total amount to be levied .

35.

WARRANT OF ASSISTANCE.

Whereas, according to the tenor and true meaning of a decree [*or* an order] bearing date the day of 186 , made in the matter of this suit, the said defendant C. D. was ordered to deliver up possession to A. B. in the said order named of all that, etc. [*as in order*]: And whereas a copy of such decree [*or* order] was duly served upon the said C. D., yet nevertheless he the said C. D., and other ill-disposed persons, his accomplices, have refused to pay obedience thereto, and detain and keep the possession of the said house [*or* tenement and premises]: These are, therefore, to authorize and require you to forthwith enter into and upon the said messuage [*or* tenement and premises], and that you do remove, eject, and expel the said C. D., his tenants, servants, and accomplices, each and every of them, out of and from the said messuage [*or* tenement and premises], and every part and parcel thereof, and that you do place and put the said A. B. and his assigns into the full, peaceable, and quiet possession thereof, and defend and keep him and his said assigns in such peaceable and quiet possession when and as often as any interruption may or shall from time to time be given or offered to them or any of them, according to the true intent and meaning of the said order; and herein you are not in any wise to fail.

Given under the seal of the Court, this day of 186 .

By the Court.

Registrar.

To the High Bailiff of the said Court,
and others the bailiffs thereof.

36.

WARRANT OF POSSESSION.

Whereas on the day of 186 , this court did in the matter of this suit, decree, [*or* order] that you, the High Bailiff of this Court, should [*or* that A. B. should] take possession of the goods and chattels of E. F. deceased, in the said suit mentioned, and which at the date of the said order were in the possession of the defendant [and sell and convert the same into money or keep and hold the same to abide the further order of the Court, as the case may be].

These are therefore by virtue of the said decree [*or* order] and the statute in such case made and provided to will and require, authorize and empower, you and every one of you to whom this warrant is directed forthwith to enter into and upon the house and houses of the said C. D. and also in all other place or places belonging to the said C. D. where any of the goods or chattels, part of the estate of the said E. F., deceased, are suspected to be; and there to seize all the goods and chattels whatsoever belonging to the estate of the said E. F. deceased.

And in case of resistance, or of not having the key or keys of any door, or lock of any premises belonging to the said C. D., where any of the goods or chattels, part of the estate of the said E. F. are suspected to be, you shall break open or cause the same to be broken open, for the better execution of this warrant.

Given under the seal of the court this day of 186 .

By the Court,

Registrar.

To the High Bailiff of the said Court, and others the bailiffs thereof.

37.

NOTICE OF CHANGE OF ATTORNEY.

To the Registrar of the Court.

Take notice that I, A. B. [*or* C. D.] have hitherto employed as my attorney G. H. of in the above-mentioned cause, but that I have ceased to employ him, and that my present attorney is I. K. of

A. B. [*or* C. D.]

38.

ORDER OF REVIVOR.

Upon application of [*here state by whom the application is made and the events which have happened rendering it necessary to apply*], I do order that this suit stand revived and be in the same plight and condition as the same was in at the time of the said abatement.

Dated this day of

J. S., Judge.

39.

ORDER OF PAYMENT OF LEGACY INTO COURT OF CHANCERY.

Whereas it has been found by this Court by its decree of the day of in this suit [*or* matter] that K. L. of is entitled to the sum of ; and whereas the said K. L. is an infant [*or* absent beyond seas], and it appearing to the Court that it is desirable that, under the power given to it by the fifth section of the Act of Parliament passed in the twenty-eighth and twenty-ninth years of Her Majesty's reign, chapter ninety-nine, C. D., the defendant in this suit [*or matter, as the case may be*], should be ordered to pay such sum of money to the accountant-general of the Court of Chancery, in accordance with the provisions of section thirty-two of an Act passed in the session of Parliament held in the thirty-sixth year of the reign of His Majesty King George the Third, chapter fifty-two, it is ordered that the said [ ] do pay the same accordingly, and do within days produce to the registrar of this Court the certificate of the said accountant-general of the payment to him of such money.

By the Court,

Registrar.

[ENDORSEMENT ON LAST ORDER.]

N.B.—Your attention is drawn to the following provisions of the Act 36 *Geo.* 3, c. 52, *and to the Rule of this Court.*

Any legacy or sum of money to which any person who is an infant or absent beyond seas may be found and declared entitled by any County Court in any suit or matter under this Act may be ordered by the Court to be paid to the accountant-general of the Court of Chancery, in accordance with the provisions of section thirty-two of an Act passed in the session of Parliament held in the thirty-sixth year of the reign of His Majesty King George the Third, chapter fifty-two; and the person ordered to pay the same shall, within such time as the Court shall direct, produce to the registrar of the Court the certificate of the accountant-general of the payment of such money; and if default be made in such payment the judge may direct a warrant of execution to issue to the high bailiff of the Court, who by such warrant shall be empowered to levy or cause to be levied by distress and sale of the goods and chattels of such person a sum of money equal in amount to the sum which he was ordered to pay to the said accountant-general and to the costs incurred by reason of such default, and the sum so levied shall be paid to and be receivable by the said accountant-general under the direction of the Court.

Rule of Court.—Where default shall be made in the production of the certificate of the accountant-general the registrar shall give notice in writing to the judge of the fact of such default, and the judge may thereupon direct a warrant of execution to issue in accordance with section 5 of the Act.

40.

ORDER OF TRANSFER OF SUIT OR MATTER TO COURT OF CHANCERY.

Whereas it appearing that the subject matter of this suit

exceeds in amount the sum of £500, it is ordered that this suit [*or* matter] be transferred to the High Court of Chancery, together with the annexed certificate of the registrar of this Court, showing the state the suit [*or* matter] and the proceedings that have been had therein in this court.

By the Court.

Registrar.

41.

ORDER IN THE NATURE OF AN INJUNCTION.

The plaintiff undertaking [by his counsel *or* attorney] to abide by any order this Court may make as to damages, in case this Court shall hereafter be of opinion that the defendant shall have sustained any, by reason of this order, which the plaintiff ought to pay: Now, therefore, C. D., the defendant in this cause, his servants, agents, and workmen are hereby strictly enjoined and restrained from pulling down or suffering to be pulled down the house being Number 16, Blank Street, Islington, in the county of Middlesex, and from selling the materials whereof the said house is composed, [*or* from entering into any contract or contracts, and from accepting, drawing, indorsing, or negotiating any bills or bill of exchange, notes or note, or written securities or security, in the name of the partnership firm of , and from contracting any debts or debt, and buying and selling any goods, and from making or entering into any verbal or written promise, agreement, or undertaking, and from doing or causing to be done any acts or act in the name or on the credit of the said partnership firm, or whereby the said partnership firm can or may in any manner become or be made liable to or for the payment of any sums or sum of money, or for the performance of any contract, promise, or undertaking, [*or, as the case may be*], until the day after the day upon which the cause shall be heard, or until further order [*or* until the day of upon which day this Court will consider whether this order shall be further continued].

Dated this day of .

J. S., Judge.

If you the said C. D. [your servants, agents, or workmen,] act in disobedience to this order, you the said C. D. will be liable to be committed by this Court, and also be liable to have your estate sequestered.

42.

NOTICE OF APPLICATION FOR COMMITTAL.

Take notice that the plaintiff A. B. will on the day of 18 apply to this Court for an order for your committal to prison for having disobeyed the order of this Court made on the day of 18 enjoining and restraining you [*or* for having neglected to obey the decree or order made on the day of 18 requiring you] (*here set out the mandatory part of the decree or order*); and further take notice that you

are hereby required to attend the Court on the first-mentioned day to show cause why an order for your committal should not be made.

Dated this day of 18 .

E. F., Registrar.

To C. D. the Defendant.

43.

ORDER OF COMMITTAL FOR BREACH OF AN ORDER IN THE NATURE OF AN INJUNCTION.

Whereas by an order of this Court, dated the day of 18 [*here recite the order*]: Now, upon the application of the plaintiff, and upon hearing the defendant [*or if the defendant does not appear*, reading the affidavit of X. Y., *or where service has been by bailiff*, of L. M., a bailiff of this Court, *or* the County Court of holden at , showing, *or* being satisfied on oath, that a copy of the said order and notice of this application have been severally served upon the defendant C. D.], and upon reading the affidavit of, etc. [*enter evidence*], the Court being of opinion, upon consideration of the facts disclosed by the said affidavit [*or* affidavits], that the said defendant C. D. has been guilty of a contempt of this Court by a breach of the said Order, doth order that the saith defendant C. D. do stand committed to [*here insert prison used by the Court*] for the said contempt.

44.

ORDER OF COMMITTAL FOR NEGLECT TO OBEY DECREE OR ORDER.

Whereas by a decree [*or* order] of this Court dated the day of 18 [*here recite the decree or order*]: Now, upon the application of the plaintiff, and upon hearing the defendant, [or *if the defendant does not appear*, reading the affidavit of X. Y., *or*, *where service has been by bailiff*, of L. M., a bailiff of this Court, *or* the County Court of holden at showing, *or* being satisfied on oath, that a copy of the said decree [*or* order] and notice of this application have been severally served upon the defendant C. D.,] and upon reading the affidavit of, etc. [*enter evidence*], the Court being of opinion, upon consideration of the facts disclosed by the said affidavit [*or* affidavits], that the said defendant C. D. has been guilty of a contempt of this Court by neglecting to obey the said decree [*or* order], doth order that the said defendant C. D. do stand committed to [*here insert prison used by the Court*] for the said contempt.

45.

WARRANT OF COMMITTAL.

To the high bailiff and others the bailiffs of the said Court and all peace officers within the jurisdiction of the said Court, and to the governor or keeper of the [*here insert prison used by the Court*].

Whereas by an order bearing date the day of it

was ordered that the defendant C. D. should stand committed to prison for contempt of this Court:

These are therefore to require you forthwith to arrest and apprehend the defendant C. D. and him safely convey and deliver to the governor or keeper of the [*prison used by this Court*], and you, the said governor or keeper, to receive the defendant C. D. until further orders of this Court.

Dated this day of 18 .

E. F., Registrar of the Court.

46.

NOTICE OF APPLICATION FOR DISCHARGE FROM CUSTODY.

Take notice that I intend on the day of 18 to apply to this Court [*or* the registrar of this Court] to discharge me from custody, I being desirous of clearing my contempt.

Dated this day of 18 .

C. D., Defendant.

To A. B., Plaintiff.

47.

ORDER OF DISCHARGE FROM CUSTODY.

Upon application made this day of by for the defendant, who was committed to prison for contempt by order of this Court dated the day of 18 , and upon reading the affidavit of the defendant filed the day of 18 showing that he is desirous of clearing his contempt, and upon hearing the plaintiff [*or if no one appears for plaintiff, then* upon being satisfied that notice of this application has been duly served upon the plaintiff], this Court [*or* I, the undersigned registrar of this Court], do hereby order that the said defendant be discharged out of the custody of the governor [*or* keeper] of [*here insert name of prison*] as to the said contempt, but not as to the costs of the said contempt.

Dated this day of 18 .

E. F., Registrar of the Court.

48.

AFFIDAVIT, UNDER 30 & 31 VICT. C. 142, S. 24.

In the County Court of holden at

In the matter of "The County Courts Act, 1867," and of [*add the title of the particular trust, as* "the trusts of a certain indenture of mortgage, dated the day of , and made between A. B. and C. D."]

I, C. D., of [*address and description*], make oath and say, as follows—

1. *State place of service, as*—My house being is the place where I am to be served with any notice or application relating to the trust fund hereinafter mentioned.

2. *State the amount of money or stock proposed to be paid, or transferred, or security deposited in trust to attend the orders of the Court, as* under the provisions of the said Act, I desire to pay into the Post Office Savings Bank the sum of hereinafter mentioned.

3. *Set out a short description of the trust and of the instrument creating it, as*, By the indenture before mentioned a certain messuage situate at with the appurtenances, was mortgaged by the said A. B. to me, my heirs and assigns, for securing to me the repayment on the day of 18 of the sum of £ , with interest for the same at the rate of £ per cent. per annum, and the said indenture contained a power of sale in case of default in payment, and it was by the said indenture declared that the moneys to arise from any such sale should, after retaining thereout the expenses of executing the said power, and the said principal money and interest, be paid to the said A. B., his heirs or assigns.

* Here insert present address and description. If the address of any person interested be unknown to the trustee, this fact must be set forth in the affidavit.

The said A. B. died on or about the day of , and by his will, dated the day of , appointed E. F. of *, executor thereof, and devised the said hereditaments, subject to the said mortgage, unto G. H. of * and J. K. of * in trust for the said E. F., for his life, and after his death upon certain trusts for sale, and for the division of the proceeds amongst the following persons, namely, the testator's son M. N. of *, and his children or child, and the testator's daughter O., the wife of P. Q., of *, and her children or child.

The said E. F. proved the said will in [*state in what Court*], and is still living.

The said G. H. never acted in the trusts of the said will, etc.

On or about the . day of , I sold the said hereditaments by public auction to X. Y., of [*address and description*] at the price of £ .

After retaining out of the said £ the costs of sale, and the sum of , being the total amount of principal moneys and interest due upon the said mortgage, and the sum of £ being the costs of paying the fund into Court, a balance of £ now remains in my hands, and the sum of £ , which I desire to pay into the Post Office Savings Bank, in trust to attend the orders of this Court, is the said balance of £ .

4. *State the names of the persons interested in, or entitled to, the fund, to the best of the trustee's knowledge or belief, as*—

To the best of my knowledge and belief, the said G. H. and J. K., as such trustees as aforesaid, and the said E. F., M. N., and his children or child (*stating, if known, their names*), and O. P. and her children or child (*stating, if known, their names*), are the only persons interested in the said fund.

5. *Add submission to answer inquiries, as*—

I submit to answer all such inquiries relating to the application of the said fund of £ as the Court may think proper to make or direct.

Sworn at, &c.

49.

CERTIFICATE IN CASE OF MONEY.

In the County Court of holden at

(*Seal.*)

In the matter of "The County Courts Acts, 1867."

In the matter of the [*trusts of*]

I hereby certify, that [*state name, address, and description of*

party making the application] has this day filed with me, the registrar of this Court, an affidavit entitled as above mentioned, with reference to a trust fund or sum of therein mentioned, which sum, as therein stated, he desires to pay into my name as such registrar as aforesaid into a Post Office Saving Bank, as provided by the above Act.

Dated this day of

Registrar of the Court.

50.

CERTIFICATE IN CASE OF TRANSFER OF STOCK.

In the County Court of holden at

(*Seal.*)

In the matter of "The County Courts Act, 1867."

In the matter of this

I hereby certify, that [*state name, address, and description of party making application*] has this day filed with me, the registrar of this Court, an affidavit entitled as above mentioned, with reference to a trust fund of £ Bank £3 per Cent. Consolidated Annuities in the books of the Governor and Company of the Bank of England, which, as therein stated, he desires to transfer into the names of the treasurer and of the registrar of this Court [*or the superintendent, etc.*], as provided by the above Act.

Dated this day of 186 .

To the Registrar of the Court.

51.

ACKNOWLEDGMENT OF FILING OF RECEIPT OR TRANSFER TICKET.

In the County Court of holden at .

(*Seal.*)

In the matter of "The County Courts Act, 1867."

and

In the matter of this

I hereby acknowledge, that [*state the name, address, and description of the party giving to the registrar the receipt of the Post Office Savings Bank, in the case of money, or the transfer ticket in the case of stock,*] has this day delivered to me, the registrar of the Court, a *receipt* dated [*name of officer of the Post Office Savings Bank*], for the sum of £ , stating that [*state receipt*] [*or*, a transfer ticket of the Governor and Company of the Bank of England, stating that [*state as in ticket*].

Registrar of the Court.

52.

CERTIFICATE OF DEPOSIT OF SECURITY.

In the County Court of holden at .

In the matter of "The County Courts Act, 1867,"

and

In the matter of this

(*Seal.*)

I hereby certify that [*state the name, address, and description of the party depositing with the registrar the security*], has this

day deposited with me, the registrar of this Court, in the name of myself and the treasurer [*here state the nature of the security deposited*].

Registrar of the Court.

53.

NOTICE OF PAYMENT INTO POST OFFICE SAVINGS BANK OR OF TRANSFER OF STOCK OR DEPOSIT OF SECURITY.

No.

In the County Court of holden at .
(*Seal.*)

In the matter of "The County Courts Act, 1867,"
and
In the matter of this

Take notice, that on the day of [*state name, address, and description of party who has paid in the money*] under the said Act paid into the Post Office Savings Bank at , in the name of me, the registrar of this Court, the sum of £ , and in his affidavit filed in this Court on the day of shortly described the instrument creating the trust, and stated the names of the persons interested in or entitled to the fund, to the best of his knowledge and belief, as follows, that is to say [*state from the affidavit the paragraph containing the names of the persons interested or entitled*] [*or*, "transferred into the "names of of , and of me, the registrar of this "Court, in the books of the Governor and Company of the "Bank of England, the sum of £ Bank £3 per Cent. "Consolidated Annuities, in trust to attend the orders of this "Court, or deposited with me in the names of of , "and of me the registrar of this Court in trust to attend the "orders of this Court [*here describe security*"].

And further, Take notice, that any person interested in, or entitled to, the said fund, may apply to this Court respecting the investment, payment out, or distribution of the fund, or of the income thereof, according to the practice of the Court.

Registrar of the Court.

54.

NOTICE TO TREASURER.

No.

In the County Court of holden at .
(*Seal.*)

In the matter of "The County Courts Act, 1867."
and
In the matter of this

Take notice, that on the day of [*state name, address, and description of party who has deposited the security*] under the said Act deposited with the registrar of this Court, in the names of yourself and myself, in trust to attend the orders of this Court (*here describe security*).

Registrar of the Court.

To E. F., Treasurer,
(*or as the case may be.*)

55.

LETTER TO COMMISSIONERS OF TREASURY AS TO DRAWING OUT MONEY.

County Court Office,

(*Seal.*)

MY LORDS,

I have the honour to request that an authority may be addressed to the Postmaster-General to allow me to draw out of the Post Office Savings Bank the sum of £ [*here insert the sum desired to be drawn out, adding, where the sum is not to pay interest*] being the sum I am directed to draw out by order of Court dated the day of 186 .

I am, my Lords,

Your obedient servant,

Registrar of the County Court
of holden at .

G. L. RUSSELL.
J. B. DASENT.
J. WORLLEDGE.
RUPERT KETTLE.
W. FURNER.

I approve of these rules, orders, and forms, to come into force in all County Courts on the 1st day of January 1868.

CHELMSFORD, C.

A SCALE

OF

COSTS AND CHARGES

TO BE PAID TO

COUNSEL AND ATTORNIES IN ACTIONS,

As well between party and party as between attorney and client.

	In Actions of *Debt* or *Contract* exceeding £20.*			In Actions of *Tort* where Damages recovered exceed £20.*			In Actions under Secs. 11 & 12 of "The County Courts Act, 1867."		
	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
Letter before action	0	3	6	0	3	6	0	3	6
Instructions to sue or defend	0	6	8	0	6	8	0	13	4
Perusing deeds and documents when long, not exceeding		—			—		2	2	0
Attendance and entering plaint, including particulars and copies, such particulars and copies being signed by the attorney	0	13	4	0	13	4	0	13	4
Preparing Affidavit and filing, including notice of mode in which payment will accepted	0	6	8		—			—	
Copy and service of summons, if served by plaintiff, his attorney, or clerk, or servant of either of them, within two miles of the place of business of the plaintiff or attorney	0	5	0		—			—	
If beyond that distance additional for every mile but *not to exceed* 10 miles	0	0	6		—			—	
Affidavit of service with copy of summons annexed	0	5	0		—			—	
Attending to file Affidavit of service, including entering up judgment by default	0	3	4		—			—	
N.B.—The total amount of these Items where applicable to be entered on the summons.									
Attending lodging Judge's order, and preparing statement of cause of action or defence, including copies, and lodging same with Registrar, if signed by attorney (Sections 7 and 10 of "The County Courts Act, 1867")	0	13	4	0	13	4		—	

* See *ante*, pp. 58–62

	In Actions of *Debt* or *Contract* exceeding £20.			In Actions of *Tort* where Damages recovered exceed £20.			In Actions under Secs. 11 & 12 of "The County Courts Act, 1867."		
	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
Examining and taking minutes of evidence of each witness afterwards allowed by the Judge	0	3	4	0	3	4	0	6	8
If more than six folios, every additional folio (whether counsel employed or not)	0	1	0	0	1	0	0	1	0
Drawing brief for counsel, per folio . .	0	1	0	0	1	0	0	1	0
Copy brief, per folio, and necessary documents to accompany same . . .	0	0	4	0	0	4	0	0	4
Attending counsel therewith . . .	0	3	4	0	3	4	0	3	4
If conference with counsel allowed, appointing it and attending counsel . .		—			—		0	13	4
Fee to counsel and clerk, sum paid not exceeding	3	5	6	3	5	6	5	10	0
Fee to counsel and clerk, on conference .		—			—		1	6	0
Attending Court on trial, with counsel .	0	13	4	0	13	4	1	1	0
Attending Court and conducting cause, where no counsel employed . . .	1	10	0	1	10	0	2	2	0
Where judgment is deferred, attending Court to hear it	0	6	8	0	6	8	0	6	8
Plans and models where necessary for use at hearing, by special order on taxation, not exceeding	2	2	0	2	2	0	2	2	0
Witnesses' expenses, according to scale in force		—			—			—	
Attending taxing costs	0	6	8	0	6	8	0	6	8
Occasional Costs.									
Notice to produce, notice to admit,—notice of application for a new trial, or to set aside proceedings,—including copies or duplicate originals and service,—and notice of special defence and copies, including particulars, and copies in cases of set-off, and attending registrar of the Court therewith, such notices, particulars, and copies being signed by the attorney	0	6	8	0	6	8	0	13	4
On receipt of notice to produce or admit, or to answer interrogatories perusing same, and advising thereon . . .	0	6	8	0	6	8	0	13	4
All applications and motions, or attending Court to answer applications and motions under sections 50, 51, 52, and 53 of "The Common Law Procedure Act, 1854."	0	6	8	0	6	8	0	6	8
Drawing interrogatories and answer thereto under section 51 of last Act . .	0	5	0	0	5	0	0	5	0

	In Actions of *Debt* or *Contract* exceeding £20.			In Actions of *Tort* where Damages recovered exceed £20.			In Actions under Secs. 11 & 12 of "The County Courts Act, 1867."		
	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
If more than five folios, per folio	0	1	0	0	1	0	0	1	0
Attending examination under section 63 of last Act	0	6	8	0	6	8	0	6	8
Attending inspecting documents	0	6	8	0	6	8	0 pr. hour	6	8
Mileage, one way, from the attorney's place of business to place of inspection of documents, for each mile, not exceeding, unless by special order of Judge, in the whole 20 miles	0	1	0	0	1	0	0	1	0
All necessary affidavits, not exceeding five folios, including filing, each	0	5	0	0	5	0	0	5	0
For every additional folio	0	1	0	0	1	0	0	1	0
Oath—sum paid		—			—			—	
Attending Court for an order to bring up a prisoner to give evidence	0	4	0	0	4	0	0	4	0
Attending Court to support or oppose motion for new trial, or motion to set aside proceedings, or motion for a change of venue, including instructions, or any other necessary attendance, where no counsel employed	1	1	0	1	1	0	1	1	0
Attending in the last-mentioned cases with counsel	0	10	0	0	10	0	0	13	4
Fee to counsel and clerk in such cases sum paid (not exceeding)	2	4	6	2	4	6	3	5	6
All necessary applications and motions to the Court not otherwise provided for, including instructions and all attendances		—			—		0	13	4
Attorney's travelling expenses to attend Court, one way, not exceeding 20 miles, per mile	0	1	0	0	1	0	0	1	0
Where in the opinion of the Registrar he cannot return the same night, in addi- to the above mileage	1	11	6	1	11	6	1	11	6
Any attendance at the office of the Registrar, or any attendance upon the opposite party, which the Registrar may, upon taxation, think was necessary	0	3	4	0	3	4	0	3	4
All costs for letters, and for searches for certificates of birth, marriages, and deaths which the Registrar may upon taxation think necessary, such sum as the Registrar shall deem reasonable.		—			—			—	
Fees and copies: (sum paid).		—			—			—	
All necessary copies, per folio	0	0	4	0	0	4	0	0	4

	In Actions of *Debt* or *Contract* exceeding £20.			In Actions of *Tort* where Damages recovered exceed £20.			In Actions under Secs. 11 & 12 of "The County Courts Act, 1867."		
Case.	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
Drawing case per folio		—			—		0	1	0
Perusing and settling case prepared by the other party in action, per folio		—			—		0	0	6
Drawing briefs for counsel to argue case		—			—		1	1	0
Attending counsel with brief		—			—		0	3	4
Fee to counsel upon brief, sum paid not exceeding		—			—		3	5	6
Attending Court when counsel employed		—			—		1	1	0
Attending Court when counsel not employed		—			—		0	15	0
Costs of the Day on Adjournment of Cause.									
Attorney for attending Court where no counsel employed	0	15	0	0	15	0	0	15	0
Attending with counsel	0	10	0	0	10	0	0	13	4
Refresher fee to counsel and clerk	1	3	6	1	3	6	1	3	6
Witnesses' expenses, same as on trial.									
Arbitration.									
Attending reference, without counsel, for each sitting	1	0	0	1	0	0	1	0	0
Attending reference, with counsel, for each sitting	0	15	0	0	15	0	0	15	0
Where sitting exceeds four hours, for every additional hour	0	6	8	0	6	8	0	6	8
Fee to counsel and clerk, for each sitting, sum paid, not exceeding	2	4	6	2	4	6	2	4	6
Witnesses' expenses, same as on trial.									
Note.—Cost of counsel and attorney, or of an attorney on attending reference, shall not be allowed without the order of the judge; nor shall the costs of more than one sitting be allowed without the order of the judge.									
New Trial.									
Costs to be allowed on the same scale as on the original trial.									
Costs on Appeals.									
Preparing notice of appeal, including copies and service	0	5	0	0	5	0	0	10	0
Paying money into Court as deposit on appeal, including notice and service thereof	0	3	0	0	3	0	0	3	0
Notice of nature and particulars of pro-									

	In Actions of *Debt* or *Contract* exceeding £20.			In Actions of *Tort* where Damages recovered exceed £20.			In Actions under Secs. 11 and 12 of "The County Courts Act, 1867."		
	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*
posed security, including copies and service	0	5	0	0	5	0	0	5	0
Notice of Court to which appeal to be made	0	3	0	0	3	0	0	3	0
Preparing case, including copies	0	10	0	0	10	0	1	1	0
Attending judge to sign, or to settle and sign	0	6	8	0	6	8	0	6	8
Transmitting and depositing copies of case to party, and with registrar	0	5	0	0	5	0	0	5	0
Transmitting case and copies to Court of Appeal, including notice thereof to successful party	0	7	0	0	7	0	0	7	0
Application to judge for leave to proceed on the judgment	0	5	0	0	5	0	0	7	0
Depositing order of Court of Appeal, including notice and service thereof	0	3	4	0	3	4	0	6	8

Where a new trial takes place in pursuance of the directions of the Court of Appeal, the costs of such new trial shall be allowed on the same scale as in the case of a new trial granted by the judge of the County Court.

Actions under section 2 *of "The County Courts Act,* 1867," *where sum claimed exceeds* 40*s. and does not exceed* £20.

	£	*s.*	*d.*
Preparing affidavit, swearing, and filing, including notice of mode in which payment will be accepted	0	5	0
Copy and service of summons, if served by plaintiff, his attorney, or clerk, or servant, or either of them, within two miles of the place of business of the plaintiff or attorney	0	5	0
If beyond that distance additional for every mile, but not to exceed 10 miles	0	0	6
Affidavit of service with copy of summons annexed, attending to file and entering up judgment by default	0	6	8

N.B.—THE COSTS IN EVERY CAUSE SHALL UPON THE ABOVE SCALE ABIDE THE EVENT, UNLESS THE JUDGE SHALL MAKE SOME SPECIAL ORDER WITH REFERENCE TO SUCH COSTS OR ANY PART THEREOF.

A SCALE

OF

COSTS AND CHARGES

TO BE PAID TO

COUNSEL AND ATTORNIES IN EQUITABLE MATTERS,

Under "The County Courts Act, 1865," *and "The County Courts Act*, 1867."

	Lower Scale not exceeding £100.			Higher Scale above £100.		
	£	s.	d.	£	s.	d.
Instructions to sue or defend	0	10	0	0	15	0
Application for substituted service or service out of England	0	4	0	0	6	0
Service sum allowed by judge.						
Drawing plaint, or petition, or statement by defendant, or preparing instructions for counsel to draw the same, and attendance therewith	0	13	4	1	0	0
Fee to counsel and clerk therewith	1	3	6	2	4	6
Attendance, and filing plaint, petition, admission, or statement	0	3	4	0	6	8
Every copy of plaint, petition, admission, or statement	0	2	0	0	3	0
Examining and taking minutes of evidence of each witness afterwards allowed by the judge (whether counsel employed or not)	0	3	4	0	6	8
If above six folios, allowed on taxation for every additional folio	0	1	0	0	1	0
Drawing brief for counsel, per folio	0	1	0	0	1	0
Copy brief, per folio, and necessary documents to accompany same	0	0	4	0	0	4
Attending counsel therewith	0	3	4	0	3	4
Fee to counsel and clerk, sum paid not exceeding	3	5	6	5	10	0
If conference with counsel allowed, appointing it and attending counsel	0	10	0	0	13	4
Fee to counsel and clerk, on conference	1	6	0	1	6	0
Attending Court on trial, with counsel	0	14	4	1	1	0
Attending Court and conducting cause, where no counsel employed	1	10	0	2	2	0
Where judgment is deferred, attending Court to hear it	0	6	8	0	6	8
Plans and models, where necessary for use at hearing, by special order on taxation, not exceeding	2	2	0	2	2	0
Witnesses' expenses, according to scale in force		—			—	
Attending taxing costs	0	6	8	0	6	8

	Lower Scale not exceeding £100.			Higher Scale above £100.		
Occasional Costs.	£	*s.*	*d.*	£	*s.*	*d.*
Lodging order of transfer	0	10	0	0	16	8
Notice to produce, notice to admit,—notice of application for a new trial, or to set aside proceedings,—including copies or duplicate originals and service, and attending registrar of the Court therewith, such notices and copies being signed by the attorney	0	6	8	0	13	4
On receipt of notice to produce or admit perusing same, and advising thereon	0	6	8	0	13	4
Attending inspecting documents	0	6	8	0	6	8
Mileage, one way, from the attorney's place of business to place of inspection of documents, for each mile, not exceeding, unless by special order of judge, in the whole 20 miles	0	1	0	per hour. 0	1	0
All necessary affidavits, not exceeding five folios, including filing, each	0	5	0	0	5	0
For every additional folio	0	1	0	0	1	0
Oath (sum paid)		—			—	
Attending Court to support or oppose any application or motion without counsel	1	1	0	1	1	0
Attending in the last-mentioned cases with counsel	0	15	0	0	15	0
Fee to counsel and clerk not exceeding	1	3	6	2	4	6
Preparing admission by defendant	0	3	4	0	6	8
Attorney's travelling expenses to attend Court, one way, not exceeding 20 miles, per mile	0	1	0	0	1	0
If above 20 miles, actual cost		—			—	
Where in the opinion of the registrar he cannot return the same night, in addition to the above mileage	1	11	6	1	11	6
Any attendance on the registrar, or before an examiner, or any attendance upon the opposite party, which the registrar may, upon taxation, think was necessary	0	5	0	0	7	0
When the attendance is longer than one hour, then for every additional hour or part of an hour	0	4	0	0	6	0
All costs for letters, and for searches for certificates of births, marriages, and deaths which the registrar may, upon taxation, think necessary, such sum as the registrar shall deem reasonable		—			—	
Fees and copies (sum paid)		—			—	
Drawing accounts and other documents not included in the foregoing costs, but allowed upon taxation of costs to be necesssary, per folio	0	0	8	0	0	8
For perusing and adapting old abstracts of title, per three sheets	0	3	4	0	3	4
Drawing abstracts of additional deeds and documents, per sheet	0	6	8	0	6	8
For preparing conditions and contracts of sale, and fair copy, per folio	0	0	8	0	0	8
Where condition and contract are not submitted to						

	Lower Scale not exceeding £100.			Higher Scale above £100.		
	£	s.	d.	£	s.	d.
counsel, in addition to the above there shall be allowed for perusing abstracts, every three sheets.	0	3	4	0	3	4
Where conditions and contracts are to be settled by counsel, instructions to counsel to accompany abstract, and attendance therewith, or letter . .	0	6	8	0	13	4
Fee to counsel clerk		—			—	
Fair copies of abstracts of title or of accounts, documents, opinion of counsel, and of papers received from counsel, per folio	0	0	4	0	0	4
Attending sale	1	1	0	2	2	0
Where by any proceeding taken by the opposite party it becomes necessary to advise or receive instruction from a client in the progress of a suit or matter, for each attendance	0	6	8	0	13	4
Where in the course of a cause or matter a party suing or sued in a fiduciary or representative character necessarily incurs costs not allowed upon taxation between party and party, the registrar shall apply to the judge to allow such sums as he may think fit out of any funds in Court applicable to that purpose.						
Attending taxing costs	0	5	0	0	7	0
All necessary copies, per folio	0	0	4	0	0	4
Office copies obtained from Court of Chancery (sum paid)		—			—	
Letters and messages	0	5	0	0	10	0
Costs of the Day on Adjournment.						
Attending Court where no counsel employed . .	0	15	0	1	0	0
Attending with counsel	0	10	0	0	15	0
Refresher fee to counsel and clerk not exceeding .	1	3	6	2	4	6
Witnesses' expenses same as on trial.						
Costs on Appeal.						
Preparing notice of appeal, including copies and service	0	7	0	0	10	0
Preparing case, including copies	0	10	0	0	15	0
Attending judge to sign	0	5	0	0	7	0
Attending judge in case of difference to settle . .	0	10	0	0	15	0
Application to stay proceedings	0	7	0	0	10	0
Transmitting case and copies, including notice, to successful party	0	5	0	0	7	0
Application to judge for leave to proceed on judgment	0	5	0	0	7	0
Depositing decree or order of Court of Appeal . .	0	3	0	0	4	0

N.B.—*The registrar is to tax the Bills of Costs upon the lower scale when the subject matter of the suit or proceeding does not exceed* £100, *and upon the higher when it exceeds* £100.

A SCALE

OF

COSTS AND CHARGES

TO BE PAID TO

COUNSEL AND ATTORNIES,

Under "The Industrial and Provident Societies Act, 1862," *and "The Companies Act*, 1867."

Attorneys shall be entitled to charge and be allowed in proceedings under "The Industrial and Provident Societies Act, 1862," and in proceedings ransferred to a County Court under "The Companies Act, 1867," the same costs and charges as they would be allowed in the Court of Chancery, except that where the amount of the subscribed capital of the society or company shall not exceed £2000, they shall be allowed such costs and charges according to the lower scale authorized by the second rule of the 38th Consolidated General Orders of the Court of Chancery.

We, George Lake Russell, John Bury Dasent, John Worlledge, Rupert Alfred Kettle, and William Furner, being judges of County Courts appointed to frame rules and orders for regulating the practice of the Courts, and forms of proceedings therein, under the 32nd section of "The County Courts Act, 1856," have, under the powers vested in us by the said Act, and by "The County Courts Act, 1865;" "The County Courts Act, 1867;" and "The Companies Act, 1867," framed the above scales of costs and charges to be paid to counsel and attorneys in the County Courts, in lieu of all other scales of costs and charges whatsoever; and we do hereby certify the same to the Lord Chancellor accordingly.

G. L. Russell.
J. B. Dasent.
J. Worlledge.
Robert A. Kettle.
William Furner.

I approve of these scales, to come into operation in all County Courts on the 1st day of January, 1868.

CHELMSFORD, C.

SCHEDULE OF COSTS

IN

THE SUPERIOR COURTS OF COMMON LAW,

Referred to in Rule 131. *

	Above £20.			Under £20.		
WRITS.	£	*s.*	*d.*	£	*s.*	*d.*
Summons	0	12	6	0	10	0
Concurrent summons	0	10	0	0	7	6
Renewed summons	0	10	0	0	7	6
Capias	0	12	6	—		
Alias	0	10	0	—		
Pluries	0	10	0	—		
Special indorsements on writs of summons	0	5	0	0	2	6
Subpœna ad testificandum	0	7	0	0	5	0
Subpœna duces tecum	0	9	0	0	7	0
If above four folios, additional per folio	0	0	8	0	0	4
COPY AND SERVICE OF WRITS.						
Of summons, the defendant being served in London, Middlesex, or Surrey, within two miles of the place of business of the attorney, for each defendant	0	5	0	0	5	0
If beyond that distance, additional for every mile, but in cases under £20, not to exceed ten miles	0	1	0	0	0	6
If the defendant should be served in any other county the same allowance, but the distance to be calculated from the office of the attorney employed to effect service.						
Correspondent's charges for service of writ, including affidavit of service, and exclusive of mileage, in cases in which the fixed sum for costs does not apply	0	18	0	0	12	0
The like, for service of subpœnas	0	8	6	0	5	0
Extra for subpœnas duces tecum	0	2	0	0	2	0
Notice of writ for service on a foreigner out of jurisdiction	0	3	0	0	3	0
Agent's charges, according to circumstances, &c.						
In cases in which the defendant shall avoid service, and an order shall be made to proceed, a sum will be allowed for attendances to serve, according to circumstances						
Of subpœna ad testificandum	0	5	0	0	3	0
Of subpœna duces tecum	0	7	0	0	5	0

* See observations on this schedule, (*ante* p. 36).

	Above £20.			Under £20.		
INSTRUCTIONS.	£	s.	d.	£	s.	d.
Instructions to sue or defend, for pleadings, special affidavits, where allowed, and to counsel on special matters	0	6	8	0	3	4
To counsel in common matters	0	3	4	0	3	4
For brief	0	13	4	0	6	8
If difficult, and many witnesses or documents, discretionary		—			—	
For every suggestion	0	6	8	0	3	4
For plea of suggestion	0	6	8	0	3	4
To defend for executor, after suggestion of death of original defendant	0	6	8	0	3	4
DRAWING PLEADINGS, etc.						
Declaration, inclusive of instructions and ingrossing, and of attendance to file or deliver	1	5	0	0	10	0
If above ten folios, for every folio	0	1	0	0	1	0
One or more pleas, if three folios or under, exclusive of instructions, but inclusive of ingrossing	0	4	0	0	3	0
If above three folios, for every folio drawing	0	1	0	0	1	0
Joinder of issue, inclusive of ingrossing	0	4	0	0	3	0
Replications, new assignments, and other pleadings, the same as the foregoing charges for pleas.						
Issue	0	6	8	0	3	4
Record		—			—	
Authority to receive moneys out of Court	0	3	0	0	2	0
Suggestions, pleas to suggestions and subsequent pleadings, of three folios or under, inclusive of ingrossment	0	4	0	0	3	0
If above three folios, for every folio drawing	0	1	0	0	1	0
Special particulars of demand or set-off, and copy, per folio	0	0	8	0	0	4
Short ditto, and copy	0	5	0	0	2	6
Abstract of pleas, when necessary, and fair copy, and copy for judge	0	5	4	0	3	4
Bill of costs and copy for taxation, per folio	0	0	8		—	
Copy for the opposite party	0	0	4		—	
Drawing bill of costs and copy, per folio, 4*d.*, not to exceed		—		0	4	0
Copy for the opposite party, per folio, 4*d.*, not to exceed		—		0	4	0
Replication, accepting money out of Court in full of demand, inclusive of instructions	0	4	0	0	3	0
INGROSSING AND COPYING.						
Declarations, above 10 folios, per folio	0	0	4	0	0	4
Other pleadings before enumerated, above three folios, per folio	0	0	4	0	0	4
Issue (pleadings), if 15 folios or under	0	5	0		—	
If above 15 folios, for every folio	0	0	4	0	0	4
Issue (pleadings), if 10 folios or under		—		0	3	4
Above 10 folios, per folio		—		0	0	4
All proceedings on paper, per folio	0	0	4	0	0	4
The like on parchment, per folio	0	0	6	0	0	4

	Above £20.			Under £20.		
NOTICES.	£	s.	d.	£	s.	d.
To declare, reply, and subsequent pleadings, copy and service	0	4	0	0	3	0
By defendant to bring issue to trial, copy and service	0	4	0	0	3	0
To executor or administrator of sole defendant deceased, to appear to writ and suggestion	0	5	0	0	3	0
Of appearance, when appearance duly entered, and notice given on the day of appearance, but not otherwise	0	4	0	0	3	0
To plead	0	4	0	0	3	0
Of declaration, when necessary, copy and service	0	5	0	0	5	0
Of objection for misjoinder or nonjoinder of plaintiff, copy and service	0	4	0	0	3	0
Of trial, demand of residence of plaintiff, of authority for issuing writ, and all other common notices	0	4	0	0	3	0
To admit or produce, if short	0	7	6	0	5	0
The like, if long	0	10	0	0	5	0
If very long and special, a larger allowance may be made in cases above £20.						
Additional allowance for mileage as upon the service of a writ.						
COPY AND SERVICE.						
Of special and common rules	0	5	0	0	4	0
Of special rule above three folios, per folio additional	0	0	4	0	0	4
Of summons or order of a judge	0	3	0	0	3	0
Mileage on services, as upon a writ of summons.						
ATTENDANCES.						
To search for appearance to writ of summons	0	3	4	0	3	4
Two searches will be allowed if necessarily made.						
To obtain undertaking to appear to process	0	5	0	0	5	0
To give undertaking to appear	0	5	0	0	5	0
Deponent to be sworn (where allowed), for rules where no attendance in Court, to enter exception to bail, to alter or amend pleadings, to file any proceeding, to obtain office copies, consent to any summons, and other like attendances	0	3	4	0	3	4
To set down cause for trial	0	6	8	0	6	8
On each counsel with brief at trial, fee under 20 guineas, to reduce special jury, summons before a judge, and to pay money into Court	0	6	8	0	3	4
On counsel with brief fee 20 guineas and above	0	13	4		—	
To receive money out of Court	0	10	0	0	6	8
Counsel with brief, on motion, if above one guinea fee	0	6	8	0	3	4
If one guinea only	0	3	4	0	3	4
Consultation with counsel	0	13	4		—	
Conference with counsel	0	6	8		—	
Fee on every record	0	6	8	0	3	4
For common jury panel	0	3	4	0	3	4

	Above £20.			Under £20.		
	£	s.	d.	£	s.	d.
For special jury panel	0	6	8	0	3	4
To enter any suggestion on roll when necessary	0	3	4	0	3	4
Attendance in pursuance of notice to admit	0	6	8	0	3	4
For every hour beyond one	0	6	8	0	3	4
Attending making admissions, except under special circumstances	0	6	8	0	3	4
BRIEFS.						
For drawing, per folio	0	1	0		—	
Copying	0	0	4		—	
TERM FEES AND LETTERS.						
Proper business	0	13	0	0	10	0
Agency	0	15	0	0	12	0
Letters, when no term fee proper business	0	3	0	0	2	0
Agency	0	5	0	0	3	0
Letters, in interlocutory matters proper	0	2	0		—	
Agency	0	3	0		—	
In actions under £20 no allowance will be made for letters for the vacation preceding the term in which a term fee shall be allowed.						
LETTERS.						
Letter before action, and other letters	0	3	6	0	2	0
Circular letters, after the first	0	1	6	0	1	0
AFFIDAVITS.						
Drawing special affidavits, per folio	0	1	0	0	1	0
Ingrossing same, exclusive of affidavits of increase	0	0	4		—	
Common affidavits of five folios or under, including ingrossing and oath	0	6	0	0	5	0
SEARCHES.						
All common searches, exclusive of payment	0	3	4	0	3	4
If very long	0	13	4	0	6	8
COUNSEL.						
To settle special indorsement on writ		—			—	
DEFENDANTS.						
Appearance	0	7	0	0	6	0
For each additional defendant, inclusive of payment	0	1	6	0	1	6
A second summons and order for time to plead shall be allowed in special cases above £20 when necessary.						

	Above £20.	Under £20.
COUNSEL'S CLERK'S FEES.	£ s. d.	£ s. d.
The fees to be allowed to counsel's clerk not to exceed as under :—		
Upon a fee under 5 guineas	0 2 6	—
5 guineas and under 10 guineas	0 5 0	—
10 guineas and under 20 guineas	0 10 0	—
20 guineas and under 30 guineas	0 15 0	—
30 guineas and under 50 guineas	1 0 0	—
50 guineas and upwards	2 10 0 per cent.	— —
ON CONSULTATIONS.		
Senior's clerk	0 7 6	—
Junior's clerk	0 2 6	—
On general retainer	0 10 6	—
On common retainer	0 2 6	—
On conference	0 5 0	—

MISCELLANEOUS.

Close copy of proceedings in agency cases, 4d. per folio, according to actual length.

In cases under £20 no allowance will be made in respect of the following matters :—

Attending deponent to be sworn to affidavit.
Advice on evidence.

By the directions to the Masters of the Courts as given by the judges in Hilary Term, 1853, the masters in all cases shall have discretion to allow as between party and party the fees of counsel or special pleader for drawing pleadings or otherwise, and advising.

The costs of attendance by counsel or special pleader before a judge at chambers shall in no case be allowed as between party and party unless the judge shall certify for such allowance.

SCHEDULE OF FEES

IN

THE SUPERIOR COURTS OF COMMON LAW,

Referred to in Rule 131.

OFFICES OF THE MASTERS OF THE THREE SUPERIOR COURTS.

	£	*s.*	*d.*
Every writ (except writ of trial or subpœna)	0	5	0
Every concurrent, alias, pluries or renewed writ	0	5	0
Every writ of trial	0	2	0
Every writ of subpœna before a judge or master	0	2	0
——— before the sheriff	0	1	0
Every appearance entered	0	2	0
——— each defendant after the first	0	1	0
Filing every affidavit, writ, or other proceeding	0	2	0
Amending every writ or other proceeding	0	2	0
Every ordinary rule	0	1	0
Every special rule, not exceeding 6 folios	0	3	0
——— exceeding 6 folios, per folio	0	0	6
NOTE.—Plans, sections, etc., accompanying rules to be paid for by the party taking the rule, according to the actual cost.			
Every judgment by default	0	5	0
Every final judgment, otherwise than judgment by default	0	10	0
Taxing every bill of costs, not exceeding 3 folios	0	2	0
——— exceeding 3 folios, when taxed as between party and party, per folio	0	0	6
——— exceeding 3 folios, when taxed as between attorney and client, or where the attorney taxes his own bill, per folio	0	1	0
Every reference, inquiry, examination, or other special matter, referred to the master, for every meeting, not exceeding one hour	0	10	0
———for every additional hour or less	0	10	0
Upon payment of money into Court, viz. :—			
For every sum under £50	0	5	0
£50 and under £100	0	10	0
£100 and above that sum	1	0	0
Every certificate	0	1	0
Office copies of precipe, or other proceedings, per folio	0	0	6
Every search, if not more than two terms	0	0	6
——— exceeding two, and not more than four terms	0	1	0
——— exceeding four terms, or a general search	0	2	6
Every affidavit, affirmation, etc., taken before the master	0	1	0
Filing every recognizance or security in ejectment or error	0	2	6
Every allowance and justification of bail	0	3	0

	£	s.	d.
For taking special bail as a commissioner	0	2	0
Filing affidavit, and inrolling articles previous to the admission of an attorney	0	5	0
Every re-admission of an attorney	0	5	0

All other fees than those above mentioned are hereby abolished, and are not to be taken by any person in the master's offices, under any pretence whatever.

CHAMBERS OF THE CHIEF AND PUISNE JUDGES.

Every summons to try an issue before the sheriff	0	1	0
Every other summons whatever, whether in term or vacation	0	2	0
Every order to try an issue before the sheriff	0	1	0
Every other order whatever of an ordinary nature	0	2	0
Every order of a special nature, such as:—reference to arbitration, or attendance of witnesses at arbitration; service of process on person resident abroad; reference to the master to fix sum for final judgment; revival of judgment, and the like	0	5	0
Every affidavit, affirmation, etc., whether in term or vacation, each deponent	0	1	0
Every affidavit kept for the purpose of being conveyed to the proper office to be filed	0	1	0
Every proceeding filed	0	2	0
Office copies of judge's notes, or of any other proceeding whatever, per folio	0	0	6
Every exhibit signed by judge	0	1	0
Attendance as a commissioner to take affidavit. etc., or at a judge's house, or elsewhere, at request of parties	0	10	0
Attendance by counsel, each side	0	5	0

ORDER

OF

COMMISSIONERS OF HER MAJESTY'S TREASURY

REGULATING FEES.

In pursuance of the powers given by "The County Courts Act, 1856," "The County Courts Act, 1865," "The County Courts Act, 1867," and "The Companies Act, 1867," we, the undersigned, two of the Commissioners of Her Majesty's Treasury, whose names are hereunto subscribed, do hereby, with the consent of the Lord Chancellor, order that, on and after the first day of January, 1868, the several fees, or sums in the name of fees, specified in the schedules hereunder written, shall be taken on the proceedings therein mentioned, in lieu of all other fees for the proceedings set forth; and that the fees so authorized to be taken, with the exception of the fees for keeping possession of goods, and with the exception of the fees mentioned in schedules (C) and (D), shall be received by the registrars of the different County Courts, and shall be accounted for and paid over by them to the treasurers of their respective Courts, or where

there is no treasurer, as may be directed by order of the Commissioners of Her Majesty's Treasury, and that the fees set forth in schedules (C) and (D) shall be received by the registrars for the use of themselves and the high bailiffs, according as the duties are to be performed by the registrars or high bailiffs.

HENRY WHITMORE.
GERARD NOEL.

I approve of the annexed schedules of fees.

CHELMSFORD, C.

30*th December*, 1867.

SCHEDULE (A).

For every plaint, one shilling in the pound.

Where the claim or demand exceeds forty shillings, and the summons is to be served by bailiff, an additional fee of one shilling.

Where in any case the number of defendants shall exceed three, an additional fee of one shilling for each defendant above three.

No fee shall be payable on any application for a new trial, or to set aside proceedings, or in the nature of a *scire facias*, or for a summons in an interpleader.

For every judgment by consent under sects. 8 or 9 of "The County Courts Act, 1850," and for every judgment by default under section 28 of "The County Courts Act, 1856," and section 2 of "The County Courts Act, 1867," one shilling in the pound.

For every hearing, two shillings in the pound.

In all cases where the defendant shall either personally, or by his attorney or agent, admit the claim, one half of the fee paid by the plaintiff for the hearing of the plaint shall be returned to the plaintiff by the registrar of the Court, although the Court may have been required to decide upon the terms and conditions upon which the claim is to be paid.

An additional hearing fee shall be taken for every new trial.

The hearing on interpleader shall not be prepaid, but shall be estimated on the amount of the money or the value of the goods claimed, which value, in case of dispute, shall be assessed by the judge, who, at the hearing, shall direct by whom and when and how such fee shall be paid.

No fee shall be payable for hearing any application for a new trial, or to set aside proceedings, or in the nature of a *scire facias*.

For every summons for commitment under section 98 of "The County Courts Act, 1846," threepence in the pound on so much of the amount of the original demand as, in obedience to the order of the Court, should have been paid at the time of the issue of the summons.

Where such last-mentioned amount does not exceed twenty shillings, an additional fee of sixpence, and where such amount does exceed twenty shillings, an additional fee of one shilling.

For every hearing of the matters mentioned in such summons for commitment, sixpence in the pound on the amount upon which the fee on the summons is calculated.

For issuing every warrant against the body or goods, eighteenpence in the pound on the amount for which such warrant shall issue.

For issuing every warrant to deliver possession of tenements,—eighteen pence in the pound.

For every summons applied for by a creditor under the Act 8 & 9 Vict.

c. 127, one shilling in the pound upon the amount of the original demand then remaining due.

For every hearing of the matter contained in such summons, one shilling in the pound on the amount last aforesaid.

For issuing every warrant against the body consequent upon such hearing, two shillings in the pound on the amount for which the warrant issues.

For keeping possession of goods till sale, per day, (including expenses of removal, storage of goods, and all other expenses,) not exceeding five days,—sixpence in the pound on the value of the goods seized, to be fixed by appraisement in case of dispute.

In all plaints for the recovery of debt or damages, all poundage, except where otherwise specified in this schedule, shall be estimated on the amount of the claim.

In plaints under sections 11 and 12 of "The County Courts Act, 1867," poundage shall be estimated as upon a claim for a sum of twenty pounds.

In replevins all poundage, except as aforesaid, shall be estimated on the amount of the alleged rent or damage, to be fixed by the registrar.

In plaints of the recovery of tenements when the term has expired or been determined by notice, all poundage, except as aforesaid, shall be estimated on the amount of the weekly, monthly, or yearly rent of the tenement, as such tenement shall have been let by the week or by the month, or for any longer period; and if no rent shall have been reserved, then on the amount of the half-yearly value of the tenement, to be fixed by the registrar.

Where a claim for rent or mesne profits, or both, is added to a plaint for the recovery of a tenement, an additional poundage shall be taken on the amount or amounts so claimed, but where thereby the total amount on which poundage would be taken shall exceed twenty pounds, the poundage shall be estimated on twenty pounds only.

In plaints for the recovery of tenements for non-payment of rent, all poundage, except as aforesaid, shall be estimated on the amount of the half-yearly rent of the tenement.

In proceedings under "The Merchant Shipping Act, 1854;" "The Literary and Scientific Institutions Act, 1854;" and "The Metropolitan Buildings Act, 1855," the poundage shall be estimated upon the amount in dispute, and if no account is in dispute, or if the amount in dispute is not ascertained, then as upon a claim for a sum of twenty pounds.

In proceedings under "The Succession Duty Act, 1853," the poundage shall be estimated upon the amount in dispute.

In proceedings under "The Friendly Societies Act, 1855," and "The Industrial and Provident Societies Act, 1867," the poundage shall be estimated upon the amount in dispute; but if the application to the Court is not for the payment of money, the poundage shall be estimated upon the amount of the sum of money stated by the applicant to be that which he will apply to the Court to order the payment of.

In the above cases where the poundage would, but for this direction, be estimated on an amount exceeding twenty pounds, it shall be estimated at twenty pounds only.

In proceedings under "The Merchant Shipping Act, 1865," the poundage shall be estimated as upon a claim for twenty pounds, where the amount of salvage claimed does not exceed one hundred pounds; and where it does exceed one hundred pounds, five shillings shall be taken for every additional fifty pounds claimed.

In every case where the poundage cannot be estimated by any rule in this schedule, it shall be estimated on twenty pounds.

All fractions of a pound, for the purpose of calculating poundage, shall be treated as an entire pound.

No increase of fees shall be made by reason of there being more than one plaintiff or defendant, except as before directed, where the number of Defendants exceeds three.

	£	s.	d.
For taking the acknowledgment of a married woman	1	0	0
For a warrant to replevy	0	2	6
For a replevin bond, where the alleged rent or damage does not exceed £20	0	10	6
For a replevin bond, where the alleged rent or damage exceeds £20	1	1	0
For notice to distrainer	0	2	6
For delivering the goods	1	1	0
together with 6*d.* a mile from the court house to the place where the goods are.			
For making a return to a writ of certiorari	1	5	0
out of which 15*s.* shall be returned by the treasurer to the registrar, for his costs out of pocket.			
For every subpœna to be served in a home district; if served within two miles of court house	0	1	0
for every mile beyond two	0	0	6
but the total fee to be taken is in no case to exceed 8*s.*			
For every subpœna to be served in a foreign district	0	3	0

SCHEDULE (B).

Equitable Jurisdiction.

For every plaint or petition	0	10	0
For every suit or matter transferred to a County Court	0	10	0
For the hearing	1	0	0
For a decretal order	1	0	0
For a final decree	1	0	0

N.B.—*These fees are only to be charged once in a suit or matter.*

Proceedings under the Industrial and Provident Societies Act, 1862.

For every petition presented to a Court, under section 17 of the above Act	1	0	0
For every order for winding up	2	0	0
For every sitting or adjourned sitting of the Court in the matter after the order for winding up shall have been made	0	15	0
For the taxation of every bill of costs	0	10	0

The Companies Act, 1862.

For every sitting to take evidence	2	0	0

The Companies Act, 1867.

For every sitting before the judge	2	0	0

SCHEDULE (C.)

THE COUNTY COURTS ACT, 1867.

	£	s.	d.
REGISTRARS' FEES.			
For filing every affidavit under section 2, where the claim exceeds 40*s.*	0	1	0
For examining and filing affidavit of service, taxing costs, and entering up judgment under section 2 where claim exceeds 40*s.*	0	4	0
For entering writ under sections 7 or 10, and sending notice to parties of day of trial, etc.	1	1	0
Taxing costs in such actions	0	5	0
On entry of plaint under sections 11 and 12	1	1	0
Where the plaint has not been entered under section 12, and the judge shall certify that the court has exercised jurisdiction under that section, the above fee of £1. 1*s.* 0*d.* shall be paid.			
On every order for a new trial in actions commenced under sections 11 and 12	0	10	6
On lodging notice of appeal	0	10	6
Taxing costs under sections 11 or 12	0	10	0
HIGH BAILIFFS' FEES.			
For service, under section 2, where the claim exceeds 40s.	0	1	0
For affidavit of service, but not of non-service	0	1	0

SCHEDULE (D).

EQUITABLE JURISDICTION.

	Where the subject matter of the suit or proceeding does not exceed £100.			Where it exceeds £100.		
REGISTRAR'S FEES.	£	s.	d.	£	s.	d.
For filing every plaint or petition, and issuing summons or notice thereon	0	6	0	0	9	0
If more than one defendant, then for every additional defendant	0	2	0	0	2	0
If defendant out of England, then in addition (including filing affidavit)	0	5	0	0	7	0
For filing or recording order by judge for adjournment	0	2	6	0	4	0
For issuing every warrant	0	2	0	0	3	0
For preparing power of attorney	0	3	0	0	3	0
For filing affidavit and receipt, giving certificate, and issuing notices in matters under ORDER XI., rules 6 to 16 inclusive	0	6	0	0	9	0

	Where the subject matter of the suit or proceeding					
	Does not exceed £100.			Where it exceeds £100.		
REGISTRARS' FEES—*continued.*	£	*s.*	*d.*	£	*s.*	*d.*
Where the notices under Order XI., Rule 16, shall exceed five, then for every additional notice 6d.						
For filing and sealing every affidavit, or other document not being a document annexed to an affidavit	0	1	0	0	1	0
For every application to inspect an affidavit	0	1	0	0	2	0
For every summons to a witness	0	3	6	0	5	0
For attesting admission of defendant and filing	0	3	6	0	5	0
For filing statement of defendant, or notice by plaintiff for dismissal of cause	0	2	6	0	4	0
For drawing, filing, and sealing every decretal order, final decree, or an order on a petition, or application for an order in the nature of an injunction (including issuing the copy of same for service)	0	15	0	1	5	0
If more than one copy of decree, etc., to be issued, then for every additional copy	0	2	0	0	2	0
For perusing and filing papers, application to judge, drawing directions to proceed, and notice to parties on transfer of proceedings from Court of Chancery	1	1	0	1	1	0
For drawing advertisements and inserting	0	5	0	0	7	0
For advertisement—sum paid.						
For every sitting in which the registrar is employed in taking accounts, making inquiries, or acting as a special examiner	0	7	0	0	10	0
When the sitting is longer than one hour, then for every additional hour or part of hour	0	5	0	0	7	0
Where the registrar shall be required to attend elsewhere than at the Court or office, in addition to the above	0	10	0	1	0	0
Mileage one way from the office to place of examination, for each mile	0	0	6	0	0	6
For application to judge for further directions (including drawing order)	0	7	0	0	12	0
For drawing draft order for an *ex parte* application, and the order as afterwards made	0	10	0	0	15	0
For certificate directed to be made by any decretal order	0	15	0	1	10	0
For every inspection of certificate at registrar's office	0	1	0	0	2	0
For giving any notice required by any of "the Orders" (including copying)	0	2	0	0	2	6
For office copy of every document, per folio	0	0	4	0	0	4
For making and transmitting note of any decretal order or final decree, or of an order made on petition under Order XXIII., Rule 24	0	2	6	0	3	6

	Where the subject matter of the suit or proceeding	
	Does not exceed £100.	Where it exceeds £100.
REGISTRARS' FEES—*continued.*		£ s. d.
For auditing receiver's accounts, where sum in account does not exceed £100	0 5 0	0 5 0
And for every additional £50, or fraction thereof	0 2 6	0 2 6
For every application for a search and searching	0 2 0	0 2 0
For taxation of costs	0 5 0	0 7 0
For payment out of Court and taking receipt for dividends on stock, exceeding £1 and not exceeding £5	0 2 0	0 2 0
Exceeding £5	0 3 0	0 3 0
For procuring investments in consols, 5s. per cent. on the amount invested, exclusive of bankers' and brokers' commission.		
For drawing orders under Order XVII., Rule 7	0 4 0	0 4 0
HIGH BAILIFFS' FEES.		
For calling the cause	0 2 0	0 3 0
For service, within home district, of every summons, petition, notice, or order, not being summonses to jurors—		
If within one mile of court-house	0 2 6	0 5 0
If beyond one mile, then for every additional mile, or part of a mile	0 0 6	0 0 6
For service of every summons, petition, notice, or order in a foreign district	0 5 0	0 7 6
Where service is ordered to be personal, then an additional fee of	0 3 6	0 5 0
For affidavit of service, when required	0 2 0	0 4 0
For the execution of each warrant within home district	0 5 0	0 10 0
With an allowance of mileage, double the amount of the allowance on summonses.		
For execution of each warrant in a foreign district	0 10 0	0 15 0
Keeping possession, for each day the man is actually in possession	0 6 0	0 7 6
3s. 6d. of the above sum is to be paid to the man in possession, and his receipt produced to registrar.		
Superintending sale, whether by auction or private contract, making out account, and paying money into Court, £2 per cent. on first £50 so paid, and £1 per cent. on all afterwards.		

N.B.—Where the amount or value of the subject matter of the suit or proceeding is not disclosed by the plaint or petition, it shall be taken not to exceed £100, and the fees charged accordingly. If, however, the judge shall subsequently certify that the amount or value of the subject matter

does exceed £100, the difference between the fees up to that time taken, and those that would have been taken had it exceeded £100, may then be taken.

THE COMPANIES ACT, 1867.

REGISTRARS' FEES.

	£	s.	d.
For every summons	0	3	0
For every order	0	5	0
For every office copy of order	0	5	0
For every advertisement	1	0	0
For every certificate	0	5	0
For filing every affidavit or statement on affirmation, declaration, or attestation upon honour	0	1	6
For every sitting by the registrar	0	10	0
When the sitting is longer than an hour, then for every additional hour or part thereof	0	7	0

HIGH BAILIFFS' FEES.

Same fees for service and execution as in equitable matters.

INDEX.

Abatement of Action, rules respecting, 120.

Absconding Debtors Act, 1851, rule respecting, 137.

Absent Parties, rules respecting in equity, 147,
form of notice of decretal orders to, 271.

Accounts, in equity, rules respecting, 144.
evidence of, 145.
audit of, 156, 163.
appointment for taking, 161.
of receiver, 163.

Acknowledgments of Married Women, observations respecting, 254.

Actions, rules and forms and practice in, applied to suits and proceedings in equity, 166.

Adjournment of cause, rules respecting, 103.
of judgment summons, 112.
form of order to adjourn proceedings, 191.

Administration, *forms* of statement in suits for, 256.
of decretal order, 266.

Administrators, rules respecting, proceedings by and against, 121-123.
forms, 217-223.

Admitted Set-off, meaning of, 33.

Admission, in equity, 139.
of documents, 102.
in equity, 141.

Admissions, general form of heading and conclusion of, 168.
in equity, 255.
of claim, *forms*, 215, 216.
in equity, 265.

Advertisements, order of judge respecting, 165.
for creditors, etc. in equity, 145.
in 'London Gazette,' 165.

Affidavit necessary to obtain leave to sue, 23.
use of, as evidence in equity suits, 142.
form of, in reference to trust moneys, etc., 149, 150.
proof by, on hearing of petitions, etc., 153.

"Affidavit," meaning of word in Orders in Equity, 167.

AFFIDAVIT, *forms* of:
Common Law, general form of heading and conclusion, 162.
of service of summons, 173.
of non-service, 173.
form of, to obtain summons for judgment by default, 48, 170.
of justification, 177.
for discovery, 181.
in obedience to order for discovery, 182.
for interrogatories, 182.
to obtain a warrant to bring up a prisoner as a witness, 187.
of signature to admission, etc., 215, 216.
Forms in equity, general form of heading and conclusion of, 254.
in support of application for substituted service, 256.
of signature to defendant's admission, 265.
under 30 & 31 Vict. c. 142, s. 24, 381.

AFFIDAVITS, before whom to be sworn, 23.
by party proposing to interrogate and his attorney, 70.
to be read at the hearing of equity suits, as the evidence of the person using them, 143.
general rules respecting in equity, 154.
rejection of, 161.

AGREEMENTS, suits for specific performance or delivering up or cancelling, 2, 34.
rule respecting actions tried in County Court by agreement, 135.
forms of, to give jurisdiction, 169.
that decision of judge shall be final, 192.

ALE SCORES, right of action for, taken away, 12, 30.
observations on claims, *ibid.*

ALLOWANCE to witnesses in equity, 142.
of claims in equity, 146.

AMENDMENT, rules respecting, 105-107.
in equity, 154.

ANNUAL VALUE, limit of, in ejectment, and in questions of title, 1.

ANSWER, in equity, 140.

APOLOGY in action for libel, 96.

APPEAL, extension of powers of, 39.
remarks on, 11.
rules respecting, 118-120.
forms on, 213, 214.

APPEAL IN EQUITY, order respecting, 159.
retention of proceeds of execution to abide result of, 162.

APPELLANT, proceedings by, on appeal, 118.

APPLICATIONS, *ex parte*, in equity, 153.
forms of,
notice of, for order in the nature of injunction, 262.
for summons to produce, 264.
of notice of, for committal, 279.
for discharge from custody, 281.

APPRAISEMENT of goods taken in execution, 46.
rule respecting, 108.
in equity, 162.

ARBITRATION, order to refer action to, 124.

ARREST, illegal, transfer of action for, to the County Court, 35.

ASSAULT, transfer of action for, to the County Court, 35.
ASSISTANCE, warrant of, in equity, 155.
form, 276.
ATTACHMENT OF DEBTS, 74, 78.
observations on, 17, 18.
rules respecting, 109, 110.
ATTORNEY, service of summons by, 10.
to sign roll, and produce certificate, 103.
not necessary to give notice of employment of, 103.
change of, in equity, 164.
power of, to act, 165.
service on, when sufficient in equity, 165.
service of proceedings in equity by, 165.
form of notice of change of, 277.
ATTORNEYS, scale of costs to be paid to, power of judges to name, 39.
scale, 286.
when costs of, can be allowed in the County Court, 57.
AUDIT of accounts of Registrar in Equity, 156.
of Receiver, 163.

B.

BAILIFF, may serve process, directed to be served by high bailiff, 41.
See HIGH BAILIFF.
BANKRUPTS, notice of defence of discharge under statute relating to, 100.
form of, 183.
BARRISTER, costs of, when allowed in County Court, 57, 58.
not necessary to give notice of intention to employ, 103, 104.
BEER. *See* ALE SCORES.
BILLS of Exchange Act, rules respecting, 136.
form of summons under, 176.
of bond under, 177.
BOND, security by, 117, 118.
forms of, under the Bills of Exchange Act, 177.
on objection to trial in the County Court, 188, 189.
on appeal, 213.
in replevin, 242, 243.
to be given by receiver, 275.
BOOKS, to be kept by registrar, 84.
in equity, 161.
by high bailiff, 85.
to be open to treasurer, 85.
of account, evidence of, in equity, 145.
BUSINESS, place of, what is, 24.
suing where defendant carries on his, 25.

C.

CANCELLING agreements, suits for, 34.
CASE, costs in actions on the, in the superior courts, 54.
CASE, on appeal, rules respecting, 119.
in equity, 159.
in ejectment for the opinion of the judge, 127.
forms, 213, 214.
CAUSE of action.
power to sue where part of cause of action arose, 24, 25.
observations on former law as to, 2, 3.

Cause of Action, meaning of, 23.

Certificate for costs in the superior Courts when necessary, 54.
exercise of power, 5.
under the new Acts, 7, 55.
to deprive of costs in the superior Courts, 54, 55.
certified copy of judgment, 112.

Certificate, registrar's, order in equity respecting, 147.
form, 272.
in trust matters, 150.
forms, 282, 283.
form of certificate of deposit of money, 176.
of result of hearing of a cause, 196.
for the discharge of a defendant from custody, 203.

Certificates, general forms of heading of, 255.

Chancellor (Lord), substituted for Secretary of State, 41.
power of to appoint deputy judge when deputy judge already appointed ill, 41. *See* Equity.

Chancery, powers of Court of, under trustee Act, given to County Courts, 42, 43.
order, rules, and forms of, under the Companies Act, 1867, and the Industrial and Provident Societies Act, 1862, applied to County Courts, 167.
transfer of proceedings to or from, order in equity respecting, 158.

Cider. *See* Ale Scores.

City of London, power of suitors to sue in, 3, 29, 30.

City of London Court, Sheriffs' Court to be so called, 46, 47.
power to sue in, 3, 29, 30, 46, 47.
included in words "County Court," 46, 47.
application of rules and orders to, 47.

Claims in Equity, rules respecting, 145, 146.
forms of 256–261.

"Clear Days," meaning of, 82, 167.

Clerk, where carries on business, 25.

Commitment (on judgment summons), rules respecting, 112, 113.
form of, on hearing of plaint, 196.

Committal, *forms* of notice of application for, (in equity), 279.
of order of, for breach of injunction, 280.
of order of, for neglect to obey decree or order, 280
of warrant of, 280.
of notice of application for discharge, 281.
of order of discharge, 281.

Common Law Procedure Act, 1854, application of some of the provisions of to County Courts, 68–80.
general observations on the applied sections, 13–20.

Company, where it dwells or carries on business, 24.
orders under the Companies Act, 1867, 167.

Compensation to officers of hundred and other superior courts, 43.

Compulsory production of documents, in equity, 141.

Conclusion, general form of, in common law proceedings, 168, 169.
in equity, 254, 255.

Confessions, rule respecting, 134. *See* Admissions.

Conduct of Suit, rule respecting, 165.

CONSENT formerly necessary to give jurisdiction in questions of title, 1.
to judgment under "The County Courts Act, 1850," rule respecting, 135.
form of notice of consent, 170.
form of consent to determine questions of title, 189.
CONTEMPT, *form* of warrant of commitment for, 248.
forms of commitment for, in equity, 280.
CONTRACT, transfer of actions of, from superior court to County Courts, 33.
rules respecting, 94, 95.
form of particulars of demand in, 179.
and notice of trial, 179.
costs of actions of, transferred, 64, 65.
in actions founded on, if defendant does not appear, proof may be made before the registrar, 40.
costs in actions of, in the County Court, 57, 59, *et seq.*
CORPORATIONS, where they dwell and carry on business, 24.
CORPOREAL HEREDITAMENTS, jurisdiction when title to, in question, 1, 37.
observations on, 1, 38.
appeal, 39.
costs, 63.
rules respecting, 133.
COSTS, power to award, in actions where no jurisdiction, 2, 39.
observations on the extension of the operation of the County Courts by deprivation of, 4–8.
former law as to the deprivation of, in the Superior Courts, 4, 5, 54, 55.
new provision, 5, 30, 55.
effect of alterations, 5–8, 31.
certificate for, in what cases necessary, 5, 30, 31, 55.
observations on probable exercise of power in future, 7, 31.
defendant's right to costs as between attorney and client repealed, 8.
oversight in the new Act respecting, 8.
taxation of, 107.
costs in actions of contract removed to County Court, 32.
in actions of tort removed to County Court, 35, 36, 37.
control over, by judge, 56.
to abide the event where no direction, 56, 57.
in equity, discretionary, 34.
power to judges to frame scale of, 39, 58.
where action brought in inferior Court other than County Court, 44.
on interpleader, 45.
treble, for defendant, 63.
of application for attachment of debts, 76.
undertaking for, by next friend of infant, 82, 83.
form of, 169.
in equity 166.
form, 255.
on payment of money into court, 96.
when defence is a tender, 101.
where plaintiff does not appear at the trial, 103.
rules repecting, 107, 108.
of bailiff, on interpleader summons, 117.
in ejectment, where plaintiff does not appear, 127.
of suits in equity, 140.
of proving claims in equity, 145.

Costs, payment of, by trustees, 152.
costs of affidavits in equity, 154.
of advertisements in equity, 165.
registrar, taxing officer in equity, 166.
creditors' costs of proving debts, 166.
forms of order for costs, where plaintiff does not appear, 192.
of judgment against defendant for, 192.
of order for costs of the day, 197.
for defendant's costs in ejectment, 230.
execution for, in ejectment, 231.
scales of, to be paid to counsel and attorneys, 286.
schedule of costs in the superior Courts, 295.

Costs, chapter on.
of the general right to costs in actions begun and ended in the superior Courts, 53.
plaintiff's right to costs, 53.
defendant's right to costs, 56.
quantum of costs, 56.
of the right to costs in actions begun and ended in the County Courts, 56.
quantum of costs, 57.
where the debt or damage claimed does not exceed £20, 57, 58.
where the debt or damage claimed exceeds £20, 58, 62.
treble costs for defendant, under "The County Courts Act, 1850," 63.
costs in actions of ejectment, and where title in question, 63.
costs in actions sent for trial or removed from the superior Courts to the County Courts, 64.
actions of contract removed into the County Court, 65.
actions of tort removed into the County Courts, 66.
costs in actions removed from the County Courts to the superior Courts, 66, 67.

Counsel, scale of costs to be paid to, power of judges to frame, 39.
scale, 286.
when costs of, can be allowed in County Court, 57, 58.

Counties Palatine, Courts of, are superior Courts, 44.
appeal in equity to, 160, 161.

County Court, meaning of, 46.

County Court Acts, short titles of, 46, 52.

"Court," meaning of, 167.

Covenant, particulars of breaches in actions of, 90.

Coverture, notice of defence of, 100.
form of, 183.

Creditors, rule respecting attendance in equity, 145.
and production of securities, *id.*
costs of creditors proving debts, 166.
form of statement by, in suit for administration, 256.
of notice to, to prove his claim, 271.
of allowance of claim, 272.

Custody of documents, rule as to proper custody of, 102.
of securities, 162.
persons in, under equitable process, application by, for discharge, 166.
form of order for discharge of defendant from, under judgment summons order, 203.
forms relating to discharge of persons from, in equity, 281.

D.

DAYS, computations of, 82.
DEATH of parties in ejectment, effect of, 128, 129, 130. *See* SCIRE FACIAS.
DEBTS, attachment of, 74–78.
observations on the, 17, 18, 20.
rules respecting, 109, 110.
costs of proving, 166.
interest on, 166.
DEBTORS, ABSCONDING, ACT, 1851, rule respecting, 137.
DEEDS, production of, in equity, 145.
DEFAULT, judgment by, 28.
general observations upon, 9, 10.
form of summons to obtain judgment by, 174.
DEFENDANT appearing and admitting claims, proceedings on, 40.
right to costs in the superior Courts, 56.
in the County Courts, 62, 63.
interrogatories by, 73, 74.
form of judgment for, 193.
forms of summons and judgment on change of, 217.
form of statements in equity, 266.
DEFENCES, rules respecting, 100, 101.
DECREE in equity, 143.
final, order respecting, 148.
supplementary, 148.
rehearing, 155.
enforcement of, 155.
registry of, 166.
general *form* of heading and conclusion of, 255.
form of final decree for foreclosure, 270.
partnership, 271.
DECRETAL ORDERS, rules respecting, 143, 144.
general *form* of heading and conclusion of, 255.
other *forms*, 266–271.
execution of, 144–146.
forms, 275–281.
registry of, 166.
DELIVERING UP AGREEMENT, suits for, 2, 34.
DENMAN'S (LORD) ACT, 3 & 4 Vict. c. 29, 8.
DEPOSITIONS, reading of, in equity suits, 143.
DEPOSIT, *form* of certificate of, 176.
DEPUTY JUDGE, powers of, 41.
when ill, chancellor may appoint another, *ib.*
DEPUTY REGISTRAR, powers of, 41.
duties of, 84.
DETINUE, rule respecting actions of, 134.
form of judgment in, 245.
warrant of execution in, 245.
DISCOVERY OF DOCUMENTS, provisions of the Common Law Procedure Act, 1854, respecting, 69–74.
general observations, 13–17.
form of affidavit for, 181.
of order for discovery, 181.
of affidavit in obedience to order for, 182.

DISCLAIMER, statement in the nature of, in equity, 140.

DISMISSAL OF SUIT, in equity, 140.

DISTRESS, illegal, transfer of action for, to the County Court, 35.
rules respecting actions of replevin in cases of distress for rent or damage feasance, 134.

DOCUMENTS, discovery of, 69–74.
observations on powers relative to the, 13–17.
inspection of, 97, 98.
in equity, 141.
notice to admit, 102.
proof of, produced from proper custody, 102, 142.
admission of, in equity, 141.
compulsory production of, in equity, 141.
before registrar, 145.
filing of, in equity, 161.
rejection of imperfect, in equity, 161.
form of, 163, 164, 166.
service of, 164.
copies of, for use of judge, 164.
form of memorandum to be made on, 169.
form of notice to admit and inspect, in equity, 263.
of application for summons to produce, 264.

DWELLING PLACE, what constitutes, 24, 25.

E.

EASEMENT, jurisdiction in case of, 37, 38.
rules respecting, 133.
forms of particulars of cause of action, 241, 242.

EJECTMENT, extension of jurisdiction by action of, 1, 37.
transfer of actions of, to the superior Courts, 38.
appeal in, 39.
costs in, 63.
rules respecting, 124–133.
forms in, 227–240.

ENFORCEMENT OF DECREES AND ORDERS, rules respecting, 155.

EQUITABLE DEFENCES, 78, 80.
observations on, 18, 20.
notice of, 101.
form of, 183, 184.

EQUITABLE JURISDICTION, extension of, 2.

EQUITY, transfer of proceedings in, to County Court, 33, 34.
investment of money paid into court in equitable proceedings, 43.
proceedings in, may be commenced by summons, 43.
orders and rules in, 138.
appointment of days for sittings in, 164.
forms in, 254–285.

EVIDENCE, rules respecting, 101, 102.
in equity, 140–142.
books of account, 145.

EX PARTE APPLICATIONS IN EQUITY, rules respecting, 153.

EXAMINATION, oral, of parties, for purpose of discovery, 71.
rules respecting, 99.

EXAMINATION of debtor, as to debts due to him, 74.
rule respecting, 109.
of witness *de bene esse* in equity, 142.
of witness in equity residing out of jurisdiction of Court, 142.
EXECUTION AGAINST GOODS, rules respecting warrants of, 110.
EXECUTION by person not a party to suit, 120.
claim to goods taken in, 45.
EXECUTION OF DECRETAL ORDERS, 144–146, 155.
retention of proceeds of, to abide appeal, 162.
EXECUTION OF TRUSTS, *form* of statement in suit for, 257, 258.
EXECUTIONS, *forms* of, against garnishee, 195.
warrant against goods of defendant, 198.
of plaintiff, 199.
interpleader forms, 204–212.
against goods of testator, 222.
in ejectment, 231, 232.
in replevin, 244.
in detinue, 245.
under Friendly Societies and other Acts, 247.
for delivery of goods, 250, 252.
in equity, 275, 276, 277, 280.
EXECUTORS, proceedings by and against, 121.
forms, 217–223.
EXTENSION OF JURISDICTION, general observations upon the, 1–4.

F.

FALSE IMPRISONMENT, transfer of action for, to County Court, 35.
FEES, schedule of, in the superior Courts, 300.
treasury order respecting, 301.
FIERI FACIAS, warrant of, in equity, 155.
FINAL, *form* of agreement that decision of judge shall be, 192.
FINAL DECREE, order in equity respecting, 148.
FORECLOSURE, *form* of statement in suit for, 258.
of decretal orders, 268, 269, 270.
"FOREIGN COURT," meaning of, 82.
high bailiff's warrant to registrar of, *form* of, 249.
"FOREIGN DISTRICT," meaning of, 82.
service of summons in, 84, 86.
transmission of process and proceeds of warrants to and from, 114.
FORMS, registrar to frame, where not provided, 137.
of proceedings in equity, 166.
schedule of, common law, 168–254.
equity, 254–285.
FRIENDLY Societies Act, proceedings under the, 135.
forms, 247.
FUNDS in Court, order respecting, 156.

G.

GARNISHEE, proceedings against, on attachment of debts, 75, 76.
rules respecting, 110.
forms, 193, 195.
GOODS, warrants of execution against, rules respecting, 110, 111.

GROUNDS of appeal, 118.
GUARDIAN of Infant, 82, 83.
rule as to, 104.
petition by, 149.
forms of order appointing, 191, 192.

H.

HIGH Bailiff, registrars acting as, to have powers of high bailiff, 40.
remuneration of, for duties under new Act, 44.
power to interplead, 45.
form of notice of order for payment of compensation, 193.
rules prescribing duties of, 85-88.
in equity, 162.
forms as to on interpleader claims, 205-212.
form of warrant of, to registrar of foreign Court, 249.
HEARING, rules respecting, 103.
in equity, 142.
sitting down suit or matter for, 164.
See REHEARING.
form of notice of, 188.
HEADING, general form of, in common law, 168.
in equity, 254, 255.
HEREDITAMENTS, jurisdiction where title to, in question, 1, 37.
observations on, 1, 38.
appeal, 39.
costs, 63.
rules respecting, 133.
HOME Court, meaning of, 81, 82.
HOME district, meaning of, 82.
HUNDRED Courts, prohibition to sue in, 3, 43.

I.

ILLNESS of deputy judge, power of Chancellor to appoint another in case of, 41.
INCORPORATED company, where it dwells and carries on business, 24.
INCORPOREAL hereditaments, jurisdiction where title to, in question, 37, 38.
observations on, 1, 38.
appeal in actions where title to in question, 39.
costs where, 63.
rules respecting, 133.
INDUSTRIAL and Provident Societies Act, rules and orders respecting proceedings under, 135-167.
INFANT, plaints by, 82.
guardian of, 104.
proceedings by in equity, 149.
undertaking by next friend of, 166.
forms of order appointing guardian of, 191, 192.
form of petition in suit for maintenance and advancement of, 261.
INFANCY, notice of defence of, 100.
form of, 183.
INFERIOR Courts not of record, prohibition to sue in, 3, 43.
compensation to officers of, 43.
costs on actions brought in, 44.

INJUNCTION, application for, 149.
orders in the nature of an, 156.
form of order, 279.
form of notice of application for order in the nature of, 262.
of order of committal for breach of, 280.
INSPECTION of documents, 97, 98.
in equity, 141.
INSOLVENCY, rule respecting, cases, 137.
form of notice of defence of, 183.
INSTALMENTS, payment by, 108, 109.
form of notice of consent to, 170.
form of order for payment by, on judgment summons, 202.
INTERPLEAD, power of high bailiff to, 45.
INTERPLEADER cases, may be tried by a jury, 102, 103.
rules respecting, 116.
forms, 204-212.
INTERPRETATION of rules, 81.
in equity, 167.
INTEREST on investments, 157.
on debts, 166.
on legacies, 166.
INTERROGATORIES, delivery of, 70, 73.
observations on the, 13-17.
rules respecting, 98.
form of affidavit for, 182.
INVENTORY of goods taken under warrant of possession, in equity, 162.

J.

JOINT STOCK COMPANY, where it dwells and carries on business, 24.
JUDGES of County Courts, where they may be sued, 22, note (*a*).
may act for each other, 41.
rule respecting, 99.
memorandum to be made on order or document, 169.
deputy, powers of, 41.
to appoint days for holding courts, 82.
copy of proceedings for, 164.
"JUDGE," meaning of word in orders in equity, 167.
JUDGMENT, by default, observations as to, 9, 10.
inconvenience of former law, 9.
new provisions, 28.
proceedings on a judgment more than six years old, 109.
registry of judgments, 135.
JUDGMENT creditor, rules respecting, judgment summons by, 111, 112.
JUDGMENT debtor, examination of, 74.
JUDGMENT Summons, rules respecting, 111, 112.
JUDGMENTS, *forms*, general form of heading and conclusion of, 168.
of judgment for defendant or nonsuit, 193.
for plaintiff, 193.
against garnishee, 195.
of order to suspend order of judgment, 197.
application for judgment summons, 200.
of judgment summons, 200.
warrant of committal thereon, 201.
order for payment by instalments on, 202.
on scire facias on charge of defendant, 217.

JUDGMENT—*forms, continued.*
by and against executors, 217-223,
in ejectment, 228, 230, 232, 235, 236, 238, 239.
in replevin, 244, 245.
in detinue, 245.
JURISDICTION, extension of, general observations upon the, 1-4.
power to award costs where cause struck out for want of, 39.
form of notice of objection to, under s. 2, of new Act, 49.
rule respecting, 101.
rule respecting objection to, under 19 & 20 Vict. c. 108, 94.
rule respecting actions tried in County Court by agreement, 135.
form of agreement, 169.
of notice of objection to, 174, 175.
JURY, rules respecting, 102.
in ejectment, 126.
in equity suits, 143.
form of notice of trial by, 190.
of summons to, 190.
of order fining jurymen, 190.
of warrant of execution against goods for non-payment of fine, 191.
JUSTIFICATION, *form* of affidavit of, 177.

L.

LANCASTER, County Palatine of, appeal to Courts of, in equity, 160, 161.
LEASES, agreements for, suits respecting, 2, 34.
LEAVE TO SUE in district where cause of action wholly or in part arose, 22.
LEAVE TO DEFEND, *forms* of notice of, 178.
LEGACIES, interest on, 166.
form of order of payment of, 278.
LEGATEES, *form* of statement by, in administration suit, 257.
LETTER, *form* of, to be sent with summons out of district, 171.
LIBEL, transfer of action for, to County Court, 35.
rule respecting, 95, 96.
payment into Court in action of, 96.
notice of defence of truth of libel, 101.
form of, 183.
of other defences, 184.
LICENCE, jurisdiction where, claimed in respect of lands, 37, 38.
LIMITATIONS, notice of defence of statute of, 100.
form of, 183.
rules respecting, 124.
LITERARY AND SCIENTIFIC INSTITUTIONS ACT, proceedings under the, 135.
LONDON, City of, power of suitors to sue in, 3, 29.
'LONDON GAZETTE,' advertisements respecting, 165.

M.

MAINTENANCE AND ADVANCEMENT OF INFANTS, *form* of petition for, 261.
MALICIOUS PROSECUTION, transfer of action for to the County Court, 35.
MARRIED WOMEN, rule as to examination of, 157, 158.
observations respecting, 254.
MASTERS, taxation of costs in the superior Courts by, 56.

MEMORANDUM, *form* of, to be made on any order or document signed by a judge acting for another, 169.
at foot of process generally, 169.
in equity, 255.
MERCHANT SHIPPING ACT, 1862, proceedings under, 137.
METROPOLIS, suitors in the, rights of, 3.
METROPOLITAN COUNTY COURTS, right to sue in, 3-23 (note) 29.
METROPOLITAN BUILDING ACT, 1855, proceedings under, 137.
MONEY, investment of, 41, 42, 43.
rules respecting, 150.
MORTGAGE, ejectment by, 132.
forms, 240.
form of statement in suit for foreclosure, 258.
of decretal order for reference, 268.
for sale, 269.
official decree, 270.

N.

NAMES, amendment of, 105-107.
description of, in equity, 164.
NEXT FRIEND, undertaking of, for infant, 82, 83.
form of undertaking, 169.
in equity, 166.
in equity, 255. *See* GUARDIAN.
NEXT OF KIN, *form* of statement by, in administration suit, 257.
NEW TRIAL, rules respecting, 115.
form of order for, 203.
NONSUIT, *form* of judgment of, 193.
NOTICE of intention to defend on summons for judgment by default, 28.
form of notice, 49.
rules as to notice of defences, generally, 100, 101.
notice to admit documents, 102.
of appeal, 118.
in equity, 159, 160.
in ejectment, of limitation of defence to part, 126.
notice of admission in equity, 139.
of allowance of claims in equity, 146.
to absent parties in equity, 147.
to trustees, 152.
NOTICES in common law, rules respecting, 123.
forms of, general form of heading and conclusion of, 168.
forms of notice of service of summons, 170.
of non-service of summons, 173.
of doubtful service, 173.
of intention to defend or to object to jurisdiction, 174, 175.
of sureties, 177.
of leave given to defend, 178.
to defendant of day on which cause to be heard, upon leave being given to defend, 178.
of payment into Court, 178.
of trial of action of contract ordered to be tried in a County Court, 179.
of notice of trial of an action of tort remitted to County Court, 181.
of payment of part of claim into Court, 182.

NOTICES—*forms*, *continued*.
of set-off, 183.
of special defence, 183.
of equitable defence, 184.
by defendant in action for libel or slander, 184.
with warrant of execution against goods, 187.
by Court of day of hearing, 188.
of objection to action being tried in County Court, 188.
of order for trial of action in County Court, 190.
of trial by jury, 190.
to high bailiff of order for payment of compensation, 193.
of desire to examine defendant as to debts due to him, 193.
the plaintiff of payment of instalment, 197.
to plaintiff of admissions, 215.
of change of plaintiff, 216.
in ejectment, 228–240.
to distrainer of goods intended to be replevied, 242.
forms in *Equity*, general form of heading for, 255.
of application for order in nature of injunction, 262.
to admit and inspect, 263.
of decretal order to absent party, 271.
to creditor to prove his claim, 271.
of allowance of claim, 272.
that registrar's certificate may be inspected, 274.
of change of attorney, 277.
of application for committal, 279.
of application for discharge from custody, 281.
of payment into post office savings' bank or of transfer of stock or deposit of security, 284.
of notice to treasurer, *ib*.

O.

OATH, meaning of words "on oath," 82.
OBJECTION to jurisdiction, rule respecting, 94.
form of notice of, to action being tried in County Court, 188.
OFFICES of County Courts, where to be sued, 23 (note).
OFFICES, closing of by special order, 83.
registrar to keep, *ib*.
of bailiff, 86.
ORAL examination of parties for purpose of discovery when allowed, 71.
rules respecting, 99, 109.
oral examination of debtor as to debts due to him, 74.
rules respecting, 109.
ORDER in Council, applying provisions of Common Law Procedure Act, 1854, to County Courts, 68.
general observations thereon, 13.
ORDER of superior Courts for removal of actions to County Courts, 31.
ORDER of reference, *form* of, 224.
ORDERS, rules respecting, 108.
general form of heading and conclusion of, 168.
ORDERS in Equity, 138 and seq.
under the Companies Act, 167.
Industrial and Provident Societies Act, 1862, 167.
form of memorandum to be made on, or placed at foot of, 169.
OUSTER, in ejectment, proof of actual, when necessary, 128.

P.

PALATINE Courts, superior Courts, 44.
appeal to, in equity, 160, 161.
PART of cause of action, power to sue where, arose, 2, 22, 25.
observations on former law, 2, 3.
forms in ejectment on judgment, for part of premises, 238, 239.
PARTICULARS of demand, rules respecting, 90.
to be annexed by registrar, 84.
in actions where title in question, 133.
form of, in actions of contract ordered to be tried in County Court, 179.
form of, of cause of action for easements, 241, 242.
PARTICULARS of breaches in actions for penalties to secure performance of covenants, 90.
PARTNERSHIP, *form* of statement on suit for dissolution of, 261.
of decretal order, 270.
of final decree, 271.
"PARTY," meaning of, in orders in equity, 167.
PAYMENT into Court before judgment, rules respecting, 96.
form of notice of, 178.
of part of claim, 182.
in actions where defence is a tender, 101.
under order in equity, 156, 157.
PAYMENT of money in trust matters, 150.
of instalment under judgment, *form* of notice of, 197.
PEDIGREE, production of to the registrar, 145.
PENALTIES, to secure performance of covenants, actions for, 90.
PEREMPTORY motions, in equity, 153.
PERFORMANCE. *See* SPECIFIC PERFORMANCE.
PERRY. *See* ALE SCORES.
"PERSON," meaning of, in orders in equity, 167.
PETITION, proceedings by, in equity, 148–153.
rule respecting form, etc. of, 163.
registry of orders made upon, 166.
general *form* of heading and conclusion of, 254.
PLAINT, rules respecting, 88, 89.
summons to appear to, 91.
PLAINT NOTE, rule respecting, 90.
form of, 171.
PLAINTS in Equity, rules respecting, 138.
may be wholly or partly printed, 163.
general form of heading and conclusion for, 254.
PLAINTIFFS' right to costs, 53, et seq.
interrogatories by, 73.
withdrawal by, 99.
amendments of name and description of, 105.
form of judgment for, 193.
form of notice of change of, 216.
PORTER. *See* ALE SCORES.
POSSESSION FEE, 108.
POSSESSION, warrant of in equity, 155.
duty of high bailiff under, 162.
form of, 277.

Post Office Savings Bank, form of notice of payment into, etc., 284.
Practice in Equity, order respecting, 163.
rules of in actions, applied to proceedings in equity, 166.
Proceedings in Equity may be wholly or partly printed, 163.
forms of in Equity, 166.
Process, service of by bailiff, 41.
transmission of to and from foreign districts, 114.
Proof of debts or claims in equity, 145.
costs of, 166.
forms of notices respecting, 271, 272.
Prohibition to sue in Hundred or inferior Courts not of record, 3.
Property, sale of, in equity, 144.
Protection cases, rule respecting, 137.
Purchase of property, suits respecting agreements for, 2, 34.

R.

Railway Company, where a, dwells and carries on business, 24.
Receiver, appointment of, in equity suits, 143.
duties of, 162.
form of bond to be given by, 275.
Record for trial in equity, 143.
Reforming agreements, suits for, 2, 34.
Reference, form of order of, 224.
Registrar; power of, to grant leave to sue, 22.
power of, to dispose of undefended actions of contract, 10, 40.
or where defendant appears and admits claim, *ib.*
power of, when acting as high bailiff, 41.
death of joint, effect of, 41.
remuneration of, for duties under new Act, 44.
deputy, powers of, 41.
not to act under new Act on any day on which the judge does not sit, 82.
rules respecting duties of, 83-85.
to frame forms for proceedings not provided for, 137.
order respecting duties of, in equity, 161.
examination of witnesses by, in equity, 142.
to draw decretal order, 143.
to prepare copies of documents, etc., 164.
taxing officer of Court, 166.
powers of chief clerk given to, 144.
accounts of, 156.
certificate, order in equity respecting, 147.
of foreign Court, *form* of high bailiff's warrant to, 249.
form of certificate in equity, 272, 282, 283.
of notice that certificate may be inspected, 274.
"Registrar," meaning of word, in orders in equity, 167.
Registry of judgments of County Courts, 135.
of decrees and decretal orders, 166.
Rehearing of decrees or orders, 155.
Removal of actions from the superior Courts to the County Courts, 31, 37.
costs on, 64.
from the County Courts to the superior Courts, 63.

RENT, limit of, in ejectment, where title is in question, 1.
form of summons for re-entry, where rent in arrear, 225.
form of judgment for defendant in replevin for, 244.
REPEALED PROVISIONS, schedule of, 51.
REPLEVIN, cases of, may be tried by a jury, 102, 103.
rules respecting actions of, 133, 134.
forms, 242-245.
RETURN Day, meaning of, 82.
REVIVOR, and supplement, order in equity respecting, 148.
form of order, 277.
RULES, orders, and forms, 81, *et seq.*
rules and forms in actions, applied to suits and proceedings in equity, 166.

S.

SALE OF PROPERTY, suits respecting agreements for, 2, 34.
under decree, 144.
duty of high bailiff respecting, 162.
forms of order for, 268.
SAVINGS BANK, drawing out of money from, rule respecting, 157.
forms, 284, 285.
SCALE of costs and charges, power of judges to frame, 39.
the scale so framed, 286.
SCHEDULE of forms, 168, 285.
of costs in the superior Courts, 295.
of fees in the superior Courts, 300.
of fees in the County Courts, 302.
SCIRE FACIAS, proceedings in the nature of, may be tried by a jury, 102, 103.
rules respecting, 120, 121.
proceedings in ejectment, in the nature of, 130.
forms of summons and judgment, in nature of, 217.
in ejectment, 237.
SEALING of documents, in equity, 161, 164.
SEARCHES, when may be made, 85.
SECRETARY OF STATE, substitution of Commissioners of the Treasury for, 40.
substitution of Chancellor for, 41.
SECURITY for costs, when the plaintiff does not reside in England, 88.
rules respecting security, 117, 118.
on appeal, 118.
deposit of, in equity, 151.
form of certificate of deposit, 283.
form of notice of deposit, 284.
SECURITIES, production of, in equity, 145.
custody of, 162.
SEDUCTION, transfer of action for, to County Court, 35.
SERVICE of summons, 91.
in equity, 139.
proceedings after, in equity, 139, 162.
of petitions and notices relative to trust matters, 153.
of orders in the nature of an injunction, 156.
of orders to pay money, 157.
of proceedings and documents in equity by and upon attorney of party, 165.

SERVICE of Summons—*continued.*
dispensation of, by judge, 165.
substituted, 165.
forms, 256.
form of notice of service of summons by plaintiff or attorney 170.
SET OFF, admitted, reduction of claim by, to give power to remove action to County Court, 33.
meaning of admitted set-off, 33.
effect of set-off, on costs in reducing demand, 57.
rule as to notice of, 100.
set-off where one of several persons jointly liable sued, 104.
form of notice of, 183.
SHERIFF, trial before, repeal of Act 3 and 4 Wm. IV., c. 42, s. 17, respecting, 4, 31.
SITTINGS of the Court, 82.
SIGNATURE, *forms* of, affidavits of, 215, 216.
SLANDER, transfer of action for, to County Court, 35.
rules respecting, 95, 96.
costs in actions of, 54.
notice of defence of truth of slander, 101.
of other defences, 184.
SPECIAL case in ejectment, *form* of heading and conclusion for, 231.
SPECIFIC performance, extension of jurisdiction, in suits for, 2, 34.
form of statement of claim for, 259.
STAYING proceedings in County Court, 67.
STATEMENT, in the nature of a disclaimer or answer in equity, rules respecting, 140.
general *form* of heading of, 255.
STOCK, transfer of, 151.
SUBSTITUTED service in equity, 165.
forms, 256.
plaintiff in ejectment, *form* of, judgment in ejectment for, 235, 236.
SUCCESSION Duty Act, 1853, proceedings under, 137.
SUCCESSIVE summonses, to save the Statute of Limitations, 124.
SUITS (in equity), orders respecting, 138, 143, 147, 148, 153, 156.
SUMMARY procedure on bills of exchange, rules respecting, 136.
SUMMONS, service of by plaintiff or his attorney, when permitted, 10, 28.
form of notice of service, 170.
where may issue, 22.
commencement of equitable proceedings by, 43.
rules respecting, to appear to a plaint, 91.
service of, 91, 94.
to witnesses, 101.
in equity, 141.
amendment of, 105.
judgment summons, 111.
interpleader, 116.
to save Statute of Limitations, 124.
in ejectment, 125.
in equity, 138.
to be sealed, 161.
forms of, to appear to a plaint, 172.
to obtain judgment in default, 48, 174.
of letter to be sent with summons out of district, 171.

SUMMONS, *forms* of—*continued.*
of affidavit of service of, 173.
of non-service, 173.
of notice of doubtful service of, 173.
of under Bills of Exchange Act, 176.
to witness, 185.
to jurors, 190.
in nature of scire facias upon a garnishee, 194.
of application for judgment summons, 200.
summons thereon, 200.
order for payment by instalments thereon, 202.
of interpleader summons and orders thereon, 204-208.
in nature of scire facias where change of defendant, 217.
to executor respecting assets since judgment, 221.
to a tenant or other person holding over, 224.
to recover possession of premises, where rent in arrear, 225.
in ejectment, 227.
under Friendly Societies and other Acts, 247.
forms of, in equity, memorandum at foot of, 255.
on plaint, 262.
application for, to produce, 264.
to witness, 265.

SUPERIOR COURTS, transfer of actions from, to County Courts, 31-37.
rules respecting, 94, 95.
cause sent for trial from, 32.
rule respecting, 99.
transfer of actions of ejectment to, 38.
costs in actions in the, 53-56.

SUPPLEMENTARY DECREE, 148.

SURETY, officers of Court not to become, 85.
rules respecting surety, 117.

SURETIES, *form* of notice of, 176.

SURGEON, where carries on business, 25.

"SWORN," meaning of, 167.

T.

TAXING MASTERS, directions of superior Courts to, 31, 36.

TAXING OFFICER OF COURT, registrar to be, 166.

TENANT, *form* of summons to, 224, 225.

TENEMENTS, RECOVERY OF, where plaints for, to be entered, 23 (*note*).
jurisdiction for, how far affected by new provision as to ejectment, 37.
forms 224-226.

TENDER, rule as to defence of, 101.

TIPPLING ACT, 30.

TITLE, to corporeal and incorporeal hereditaments, jurisdiction where in question, 1, 37.
consent necessary heretofore, 1.
appeal in actions of, 39.
costs in, 63.
rules respecting, 133.
form of consent to Court deciding questions of, 189.

TORT, transfer of actions of, to the County Court, 35.
rules respecting, 95.

TORT—*continued.*
costs, 36, 66.
costs of actions of, in the County Court, 59, 60.
form of statement of plaintiff's cause of action, 179.
form of notice of trial in, 181.
notice of statutory defence in actions of, 101.

TRANSFER OF PROCEEDINGS TO THE COUNTY COURTS, general observations, 3, 4.
order respecting, in equity, 158.
new provisions, 31-37.

TRANSFER of suits or proceedings in equity from one Court to another, 166.
form of order of suit to Court of Chancery, 278.

TRANSFER OF STOCK, rule respecting, 151.
forms of certificate in case of, 283, 284.

TRANSMISSION of process and proceeds of warrants to and from foreign districts, 114.

TREASURER, meaning of, 82.
notice to, of deposit of security in equity, 151.
form of, 284.

TREASURY, commissioners of, substituted for Secretary of State, 40.
claim to, for compensation by officers of superior Courts affected by new Act, 43.
power to prescribe fees, to be taken, 44, 45.
form of letter to, as to drawing out money, 285.
order of, regulating fees, 301.

TRESPASS, costs in actions of, in the superior Courts, 54.

TRIAL, new rules as to, 115.

TROVER, forms of execution in actions of, 250, 252.

TRUSTEES, power of, to invest moneys, etc., 41, 42.
proceedings by, in equity, 148.
form of petition under Trustee Relief Act, 259, 260.
under Trustee Acts, 260.
for maintenance and advancement of infant, 261.

TRUST FUNDS, investment of, 41, 42.
proceedings in reference to, in equity, 148-153.
form of affidavit as to, under 30 & 31 Vict. c. 142, s. 24, 281
forms of certificate, respecting, etc., 282, 283, 284.

U.

UNDEFENDED CASES, power of registrar to adjudicate on, 10.

UNDERTAKING by next friend of infant to be responsible for defendant's costs, form of, 169.
the like in equity, 255.

V.

VENUE, change of, 23 (*note*).
in ejectment, 37.
form of order for changing, 188.

W.

WAGES, application to, of power to attach debts, 20.

WARRANTS OF EXECUTION against goods, rules respecting, 110, 111.
of commitment on judgment summons, 113.
transmission of proceeds of, to and from foreign districts, 114.

WARRANTS OF EXECUTION—*continued.*
of execution in equity, 155, 162.
forms of general form of heading and conclusion of, 168.
of execution against goods of a witness for a fine, 185.
of notice to be sent with all warrants of execution against goods, 187.
of affidavit to obtain warrant to bring up prisoner as a witness, 187.
warrant thereon, *ib.*, of commitment on hearing of plaint, 196.
of execution against goods of defendant, 198.
of plaintiff, 199.
of commitment on judgment summons, 201.
of execution against goods of testator, 222.
for giving possession of tenement, 226.
in ejectment, 231, 232.
to replevy, 244.
of execution in detinue, 245.
under Friendly Societies Act, 247.
of commitment for contempt, 248.
high bailiff's warrant to registrar of foreign Court, 249.
distringas and warrants of execution against defendant's goods, 250, 252.
forms in equity.
general form of heading of, 255.
of execution on a decree or order for the payment of money, 275.
of committal, 280.
WITNESSES, judge to direct number of to be allowed, 57, 107.
summonses to, 101.
in equity, 141.
costs of, 107.
in equity, 142.
examination of, in equity, 142.
form of summons to, 185.
in equity, 265.
of fine on, 185.
of warrant of execution against goods for fine. 185.
of affidavit to bring prisoner as a witness, 187.
of warrant thereon, *ib.*
allowance to, 253.
WITHDRAWAL by plaintiff, 99.
WRITTEN DOCUMENTS and INSTRUMENTS, discovery of, 69.
inspection of, 97. *See.* DOCUMENTS.

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INDEX TO CATALOGUE.

Page

Abridgment.
Petersdorff 22

Accounts,
Law of. Pulling ... 32

Actions at Law.
Browne 34
Kerr 14
Williams 27

Acts,
Index of. Archer ... 32

Admiralty,
Practice.
Coote 30
Reports.
Browning & Lushington 38
Robinson ... 38
Swabey ... 38
Lushington ... 38

Articled Clerk.
Francillon 35

Attachment,
Foreign, Brandon ... 20

Australia.
Torrens 31

Banking.
Grant 9
Keyser 32

Bankruptcy,
In County Courts.
Davis 10

Bar.
Law Students' Guide 36
Smith 20
Pearce 33

Barbados.
Law of 33

Belligerents.
Hamel 31

Bills of Exchange.
Grant 9

Blackstone.
Stephen's 6

Blockade.
Deane 35

Boundaries.
Hunt 4

Brokers.
Keyser 32

Carriers,
Inland. Powell ... 21
Railway. Shelford 22

Catalogue,
General 37

Chamber Practice.
Com. Law. Parkinson 28

Page

Chancery Practice.
O'Dowd 34
Hunter 18
Goldsmith 14
Drafting. Lewis ... 7

Charitable Trusts.
Tudor 23

Church Building.
Trower 15

Collieries.
Bainbridge 16

Colonial Law.
Barbados 33
Torrens 31

Commentaries.
Stephen's Blackstone's 6

Common Law,
Practice.
Dixon 9
Lush 8
Kerr 14
Quain & Holroyd 34

Companies.
Grant 32
Shelford 22

Compensation,
Law of.
Ingram 11
Shelford 22

Consolidation Acts.
Shelford 22

Constitution.
May 18
Stephen 6

Contraband of War.
Moseley 20
Deane 35

Contracts,
Specific Performance.
Fry 30

Conveyancing,
Introduction.
Lewis 7
Practice.
Barry 12
Smith 21
Tudor 13
Forms.
Crabb 16
Christie 16
Shelford 16
Rouse 19

Convictions,
Synopsis of. Oke ... 24
Forms. Oke ... 25

Copyholds,
Enfranchisement.
Rouse 5
Law of. Scriven ... 6

Page

Coroner.
Baker 33

Corporations in General.
Grant 32

Costs,
Law of. Gray ... 31

County Courts.
Davis ... 10, 39
Practice in Equity,
Davis 10

Crimes.
Davis... 39

Criminal Law.
Davis 20
Oke 24, 32

Customs.
Hamel 33

Deeds.
Tudor 13

Descents.
Fearne 37

Divorce.
Brandt 34
Swabey & Tristram 38
Browning 17

Drainage.
Woolrych 21
Wilson 36

Ecclesiastical.
Badeley 37
Practice.
Coote 32
Pamphlet.
Bayford 37
Judgment.
Burder *v.* Heath... 36
Long *v.* Cape Town 37

Election,
Law.
Lewis 36
Warren 35
Committees.
Warren 35
Sharkey 36

England,
Laws of.
Blackstone ... 6
Stephen 6
Francillon ... 35

English Bar.
Pearce 33
Smith 21

Equity,
County Courts. Davis 10
Draftsman. Lewis 7
Pleader. Drewry ... 27
Suit in. Hunter ... 18
See Chancery.

Page

Evidence,
County Court. Davis 10
Law of. Powell ... 23
Wills. Wigram ... 30
Circumstantial.
Wills 11

Examination Questions.
Hallilay's Reporter 28

Fences.
Hunt... 4

Fisheries.
Oke 26

Forms,
Conveyancing.
Crabb 16
Rouse 39
Magisterial. Oke... 24
Pleading. Greening 34
Probate. Chadwick 17

Game Laws.
Oke 26

Highways.
Glen 29

Hindu Law.
Cutler 31

House of Lords,
Reports. Clark ... 38
Practice. May ... 18

International Law.
Deane 35
Hamel 32
Phillimore 35

Jamaica Riot.
Williams 37

Joint Stock Companies.
Shelford 39
Accounts. Pulling 32

Jurisprudence.
Law Magazine ... 40

Justice of Peace.
Oke 26

Lands Clauses Acts.
Ingram 11
Shelford 22

Law Magazine ... 40

Law Studies.
Smith 20

Leading Cases,
Real Property. Tudor 13

Leases.
Crabb 16
Rouse 19

Legacy Duties.
Shelford 19

Local Government.
Glen 29

Page

Lord Mayor's Court.
Brandon 20

Lunacy.
Phillips 28

Magisterial Law.
Oke 24
Forms. Oke ... 25

Maritime Warfare.
Deane 35
Hamel 31

Maxims,
Equity. Higgins ... 39

Merchant Shipping.
O'Dowd 23

Militia Laws.
Dwyer 36

Mines and Minerals.
Bainbridge 31

Mortgages.
Fisher 39
Rouse 19

Pamphlets 37

Parliamentary.
May 18
Warren 35

Partnership.
Dixon 9
Tudor's Pothier ... 35

Patents.
Norman 35

Petty Sessions.
Oke 25

Pleading,
Common Law.
Greening 34
Williams 27
Equity. Drewry ... 27

Poor Law,
Orders. Glen ... 29

Precedents,
Conveyancing.
Crabb 16
Rouse 19
Pleading.
Chitty, jun. ... 15

Priority.
Fisher 39

Private Bills.
May 18

Prize Law.
Lushington... ... 23

Probate,
Practice. Coote ... 4
Forms. Chadwick 17
Duties. Shelford ... 19
Reports.
Swabey & Tristram 38

Page

Railways.
Shelford 22
Compensation.
Ingram 11

Real Property.
Tudor 13
Chart. Fearne ... 36

Registration.
Warren 35

Religious,
Confessions. Badeley 37
Doctrine.
Burder *v.* Heath . 36
Discipline.
Long *v.* Cape Town 37
Supremacy of Crown 36

Ritual.
Bayford 37
Hamel 36

Roman Law.
Cutler 33
Tomkins 27

Sewers.
Woolrych 21

Sheriff.
Sewell 36

Sheriff's Court.
Davis 10

Specific Performance.
Fry 30

Stock Exchange.
Keyser 32

Succession Duty.
Shelford 22

Suit in Equity.
Hunter 15

Summary Convictions.
Oke 24

Tolls.
Gunning 34

Treaties.
Hertslet 35

Trusts, Charitable.
Tudor 23

Turnpike Laws.
Oke 26

Wills.
Crabb 16
Tudor 13
Wigram 30

Winding-up.
Shelford 39

Window Lights.
Latham 16

Wreck.
O'Dowd 39

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